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Doctorate in Professional Studies (Risk)

Project Title:
Professional Ethics in Occupational Health & Safety Practice

***A project submitted to the School of Health and Social Sciences,
Middlesex University in partial fulfilment of the requirements for the
degree of Doctor of Professional Studies in Risk***

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Module: IPH220

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Abstract

This thesis provides a critical evaluation of a real world project involving the researcher as leader of a review and subsequent development of a new Code of Conduct for the world's largest health and safety body, the Institution of Occupational Safety Health (IOSH, 2011). The health and safety profession in the UK has seen many changes over the last 10-years, in particular a stronger focus on degree education, continual professional development (CPD) and Chartered Practitioner status. In addition to these progressive changes the profession has also seen a rise in the negative media coverage regarding reported risk aversion in decision-making processes. In response to the negative media and at the request of the conservative party, then in opposition, Lord Young led a complete review of health and safety in Great Britain (Young, 2010). More recently, the Government requested a further independent review into health and safety legislation (Löfstedt, 2011). Since the publication of these reports there have been calls for more rigorous competence standards for consultants and a move towards more industry led self-regulation. This has seen IOSH placed in a strong influencing position, albeit with added scrutiny of its own regulation of members. The researcher led a critical review of the existing Code as part of an IOSH standing Committee, the Profession Committee (PC) that has the responsibility among other things for examining allegations of misconduct. The project was conducted as action research and was divided into 4 cycles or stages. Stage 1 involved the critical review and benchmarking of the existing Code against other Codes using an adaptation of the PARN criteria. Stage 2 involved the consultation process for the development of a new Code. This included the researcher's role as leader of the project and an evaluation of misconduct cases reviewed by the PC. Stage 3 involved semi-structured interviews of practitioners to explore experiential accounts of ethical issues from practice to inform the guidance on the Code. Finally, Stage 4 involved the concluding consultation and consolidation of all the stages for presentation of the revised Code to IOSH Council for approval.

The project reinforced the benefits of applying a systematic approach for the development of professional body documentation. It also revealed the value of applying a flexible iterative methodology in the real world environment to prevent the project from diverging from its real world objectives. The outcome of the project has been positively received by IOSH. A new Code was produced with guidance and a revised disciplinary procedure that is fit for purpose and adaptable to change through the use of robust development and broad consultation processes. It is anticipated that these changes will make a significant contribution to the wider profession and practice. An ethical decision making model was developed from the findings and includes a dissemination strategy for the profession.

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Abbreviation List

ACAS	Advisory, Conciliation and Arbitration Service
BHA	British Humanist Association
BMA	British Medical Association
BoT	Board of Trustees (IOSH)
BOHS	British Occupational Hygiene Society
CAQDAS	Computer Assisted/Aided Qualitative Data Analysis
CEPLIS	European Council for the Liberal Professions
CIEH	Chartered Institute of Environmental Health
CIPD	Chartered Institute of Personnel and Development
CISI	Chartered Institute for Securities and Investment
Code	Code of Conduct (IOSH)
CPD	Continuing Professional Development
CV	Curriculum Vitae
DPA	Data Protection Act
DProf	Doctorate in Professional Studies/Practice
EPM	Ethical Practice Manager (IOSH)
EU	European Union
FSA	Financial Services Authority
HSE	Health and Safety Executive
HSWA	Health and Safety at Work etc. Act 1974
IEHF	Institute of Ergonomics and Human Factors
IIRSM	International Institute of Risk and Safety Management
IOSH	Institution of Occupational Safety and Health
MHSWR	Management of Health and Safety at Work Regulations 1999
NEBOSH	National Examination Board in Occupational Safety and Health
NVQ	National Vocational Qualifications
OSHCR	Occupational Safety and Health Consultants Register
PARN	Professional Associations Research Network
PEC	Professional Ethics Committee (IOSH)
PC	Professional Committee (IOSH)
REHIS	Royal Environmental Health Institute of Scotland
RIBA	Royal Institute of British Architects
RICS	Royal Institution of Chartered Surveyors
UK	United Kingdom
UKIPG	United Kingdom Inter-Professional Group

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CHAPTER ONE – INTRODUCTION

This project has been completed with the support of the Institution of Occupational Safety and Health, the largest professional body for health and safety in the world (IOSH, 2011). The project involved the researcher as leader of a systematic review and rewrite of the professional body's Code of Conduct, guidance and disciplinary procedures. It also represents the experiential and academic learning achieved previous to and during the DProf programme of study.

1.1 Outline of the Project

The project provides an account of the researcher's role as leader in the development of a revised Code of Conduct, guidance and disciplinary procedures for the professional body IOSH. The project involved many individuals; in particular the Ethical Practice Manager (EPM) who as a full time employed officer of IOSH, played a major role by providing detailed technical and administrative support throughout. The project write up is a reflective account of the development process that, in addition to meeting the aims of the project, will provide a useful account of the real world research methodologies used to underpin the development. Whilst also providing some insight into how they could be applied to similar projects. The orientation of the project, as is common in professional doctorates, is towards praxis (Wellington *et al*, 2005 p17)

The project is presented as a timeline with extracts of minutes from Committee meeting's provided in the order of occurrence. This research report has been organised as follows:

1.1.1. Chapter 1 – Introduction, Context and Background

This chapter provides an introduction and background to the project. The provenance of the project has been included as it relates to the socio-political environment and the established terms of reference of the professional body. The aim, research questions and project outcomes are clearly articulated here.

1.1.2. Chapter 2 - Review of Relevant Literature

This chapter provides a review of the literature relevant to the project. It is organised to cover ethical theories, professional ethics, Codes of Conduct, the law and ethics, ethical decision making models, ethical competence and leadership. A paradigm model of ethical theories emerged from the review that can contribute to the foundation for ethical competence training and education in the future.

1.1.3. Chapter 3 - Methodology

This chapter provides the justification and critical evaluation of the chosen methodology. The selected methods have been explained along with any ethical and insider research implications arising in the context of real world research. The application of an action research framework is described with the aid of an action research model of plan, act, observe and reflect as described by McNiff and Whitehead (2002). Within the action research model several methods have been critically discussed including the process of critically evaluating and benchmarking; semi-structured interviews and analysis; and stakeholder engagement.

1.1.4. Chapter 4 - Stage1 Evaluating & Benchmarking the Existing IOSH Code

This chapter presents Stage 1 of the action research process that involved a critical review of the existing IOSH Code of Conduct and Guidance. The review of the existing Code included benchmarking against other professional Codes and established guidance from the Professional Associations Research Network (PARN), The European Council of the Liberal Professions (CEPLIS) and the Noland Committee standards in public life. A reflective commentary is included along with recommendations for the next stage of development.

1.1.5. Chapter 5 - Stage 2 Developing a New Code of Conduct

This chapter presents the initial development of a draft Code, guidance and disciplinary procedures based on the outcomes from Stage 1. It includes the mapping of the proposed Code against the established guidance use in Stage 1 to identify any potential gaps. An evaluation of previous case of misconduct was also undertaken. The historical cases were used to establish the nature of allegations and breaches that have previously occurred to underpin the development and inform the case

studies used in Stage 4. A reflective commentary is included along with a conclusion to inform the next stage of development.

1.1.6. Chapter 6 - Stage 3 Semi-structured Interviews with Practitioners

Semi-structured interviews were conducted to establish the details of ethical dilemmas and conduct issues commonly arising in practice. This was used to inform the development of the Code, in particular the guidance and its future dissemination. The interviews provided a rich source of information that was also useful in compiling information for the case studies, Stage 4 and future educational strategies. A reflective commentary is provided along with a conclusion used to inform the next stage.

1.1.7. Chapter 7 - Stage 4 Further Development And Final Approval

The final action researcher stage is presented here. It includes further development of the IOSH Code following consultation with the IOSH Council who also provided final approval of the document. As part of the consultation case studies were used to establish the usability of the IOSH Code and provide a common experience from which to discuss the new IOSH Code, guidance and disciplinary procedures. Case studies were drawn from both previous cases and information gathered during the semi-structured interviews. A reflective commentary is provided along with some concluding comments on the stage.

1.1.8. Chapter 8 –Further Discussion

A critical discussion of the significant aspects of the project is presented here. This includes commentary on the concepts and paradigms that have emerged during the research process, areas for further development of the IOSH Code, guidance and disciplinary procedures. The dissemination strategy and the future educational requirements are also included along with a proposed ethical decision-making model and code of conduct development model.

1.1.9. Chapter 9 –Conclusions and Recommendations

A brief conclusion is provided to comment on the relative successes and shortcomings of the project in relation to the aim and objectives cited in Chapter one. Areas for further research and development that have emerged from the work are also discussed along with some recommendations related to the project product.

1.2 Context

The health and safety profession has seen many changes over the last 20 years. There have been legislative changes with the introduction of EU directives on health and safety in 1992 commonly known as the 6-pack (HSE, 2011). There has been a continual downward trend over the past 19 years in work related fatal injury rates with the UK now having the lowest rate amongst the 5 largest EU countries (HSE, 2012). The professional body has also seen a year on year increase in membership that currently stands at almost 40,000 members. There has been a stronger focus on education that has seen the development of professional diploma qualifications and more recent undergraduate and postgraduate qualifications in health and safety. Along with the changes to education there has been an enhancement in the requirements for continual professional development (CPD), reflective practice and the award of a Royal Charter in 2005 creating chartered membership status for those with suitable qualifications and sufficient experience.

In addition to these progressive changes the profession has also seen a rise in negative media coverage in the UK regarding the seemingly risk averse culture which has seen some of the blame levied on the health and safety profession and regulators. The Daily Mail newspaper has been at the forefront of this negative coverage with the journalist, Richard Littlejohn, reportedly running on average one negative story a week according to the Independent (2010). Offensive phrases such as ‘Elf and Safety’ and ‘Safety Nazis’ have been freely published (Daily Mail, 2008). Many of the articles published by the Daily Mail became the subject of rebuttals by the HSE who dedicated a section of their website to this purpose acting in the public interest called “Myth of the Month” which ran from 2007 – 2010 (HSE, 2010). In response to public concern together with the confusing and often contradictory reporting of health and safety, the Conservative Party, now part of the coalition

government, commissioned a complete review of health and safety in Great Britain led by Lord Young (Young, 2010). The report was welcomed by the professional body IOSH (2010a, p.1) and also the Chair of the HSE, Judith Hackett (HSE 2010), as an opportunity to establish a way forward that was based on evidence and not politically motivated emotion. Calls for more rigorous competence standards for consultants and a move towards more industry led self-regulation has seen IOSH placed in a strong influencing position but with added scrutiny of its own regulation of members.

One specific recommendation that emerged from Lord Young's review was the requirement for the HSE to create a register of approved health and safety consultants. This was aimed at tackling the dissatisfaction amongst small businesses that consultants were in some cases offering poor quality advice, the assumption being that they were not competent¹ (HSE 2010.). Health and safety is not a regulated profession, a regulated profession is one where access to or practice of a profession is restricted by law to those holding specific qualifications and is usually overseen by a regulatory authority. An example of this would be the Financial Services Authority (FSA) that regulates those working in the finance sectors. There is a legal requirement in the Management of Health and Safety at Work Regulations 1999 for an employer to have access to competent advice for the purposes of health and safety, however there is no regulatory authority overseeing this. There are a number of professional bodies that represent the health and safety fields of practice and most of them have professional qualification and CPD requirements for access to certain grades of membership. Two of these professions, IOSH and the Chartered Institute of Environmental Health (CIEH) have Chartered Status, available to members and this is seen as the gold standard for the professional in the UK. The HSE in setting up the consultants register, known as the Occupational Safety and Health Consultants Register (OSHCR), has based the minimum entry standard on the equivalence of the Chartered status for professionals who belong to other

¹ A competent practitioner can be defined through the definition of competence in the Management of Health and Safety at Work regulations Approved Code of Practice as, someone with suitable and sufficient qualifications, knowledge and/or relevant experience. This definition is also recognised in case Law, see *Gibson v Skibs A/S Marina* [1966] 2 All ER 476.

professional bodies² and wish to join the register (OSHCR, 2011). It is a form of quasi-regulation that remains voluntary and not fully regulated; it also only covers consultants and not other professionals working in industry as full-time employees. One of the key criteria for a professional body being included on the register is that it has a suitable Code of Conduct or ethics that is enforced by the profession. IOSH along with the other professions has a Code of Conduct that is enforced through a disciplinary procedure overseen by the Professional Committee (PC)³. The existing Code of Conduct, guidance and disciplinary procedure has not received a thorough review in over 15 years, during which time there have been substantial changes in both the profession and society at large. Professional ethics in health and safety in relation to both educational and operational matters has been a strong theme in my recent experiential learning and a focus for the DProf programme. It is from this experiential insight and rationale of the existing professional landscape that the vision for the project emerged.

This research builds on the previous work I undertook in developing academic programmes in health and safety at undergraduate and postgraduate level. Through a combination of reflection on experiential learning in practice and developing the degree programmes, gaps in the underpinning education in relation to professional ethics were revealed. This led to a systematic review of practitioner education focusing on ethics and the existing IOSH Code of Conduct for members (IOSH 2004). To achieve this, a position on the IOSH Professional Committee was required and this was achieved in 2008 following a professional panelled interview. From here the proposal to review the Code of Conduct and guidance was made along with a holistic strategy to improve practitioner education and continuing professional development in relation to professional ethics.

² Other professions are specified in addition to IOSH and CIEH as; International Institute of Risk and Safety Management (IIRSM), British Occupational Hygiene Society (BOHS), Institute of Ergonomics and Human Factors (IEHF), Royal Environmental Health Institute of Scotland (REHIS).

³ The professional Committee (PC) is an IOSH standing Committee of volunteers who are selected based on their seniority and experience in the profession with the remit to review allegations of misconduct and award sanctions or refer matters onto a disciplinary Committee for more serious offences. The PC changed its title to the Professional Ethics Committee in 2010 along with its terms of reference to reflect its focus on professional ethics.

1.3 IOSH Professional Committee

The IOSH Professional Committee (PC) is a standing Committee and part of the governance structure of the professional body⁴. It consists of chartered members and fellows who volunteer to attend meetings and fulfil the terms of reference, copy attached at appendix A with the general aim provided below:

The guardian of IOSH professional standards, including all matters that influence the development and regulation of good occupational safety and health practice amongst members. (IOSH 2008, p1)

The PC consists of eight members and a chair who are selected by the nominations Committee on behalf of the Board of Trustees (BoT) by written application and panelled interview. The Charter and Byelaws of IOSH allow for certain functions to be delegated to standing Committees, Byelaw 13(4) sets out this remit shown below.

The Board of Trustees shall appoint such Standing Committees as it considers necessary from time to time and shall by Regulations specify the composition and terms of reference of such Standing Committees. (IOSH 2008, p.32)

Full-time employees from IOSH, sometimes referred to as 'Officers', administer and advise the Committee. Officers for the PC consist of the Director of the Professional Affairs Directorate and more recently the Ethical Practice Manager. The governance structure for IOSH is shown in Figure 1 below.

⁴ IOSH is a registered Charity and as such has a governance structure that consists of a Board of Trustees, IOSH Council and a range of standing Committees fulfilling various functions. These Committees consist of voluntary members and are supported by full-time IOSH staff who ensure the Royal Charter, Byelaws and regulations of the Institution are followed in the general public interest.

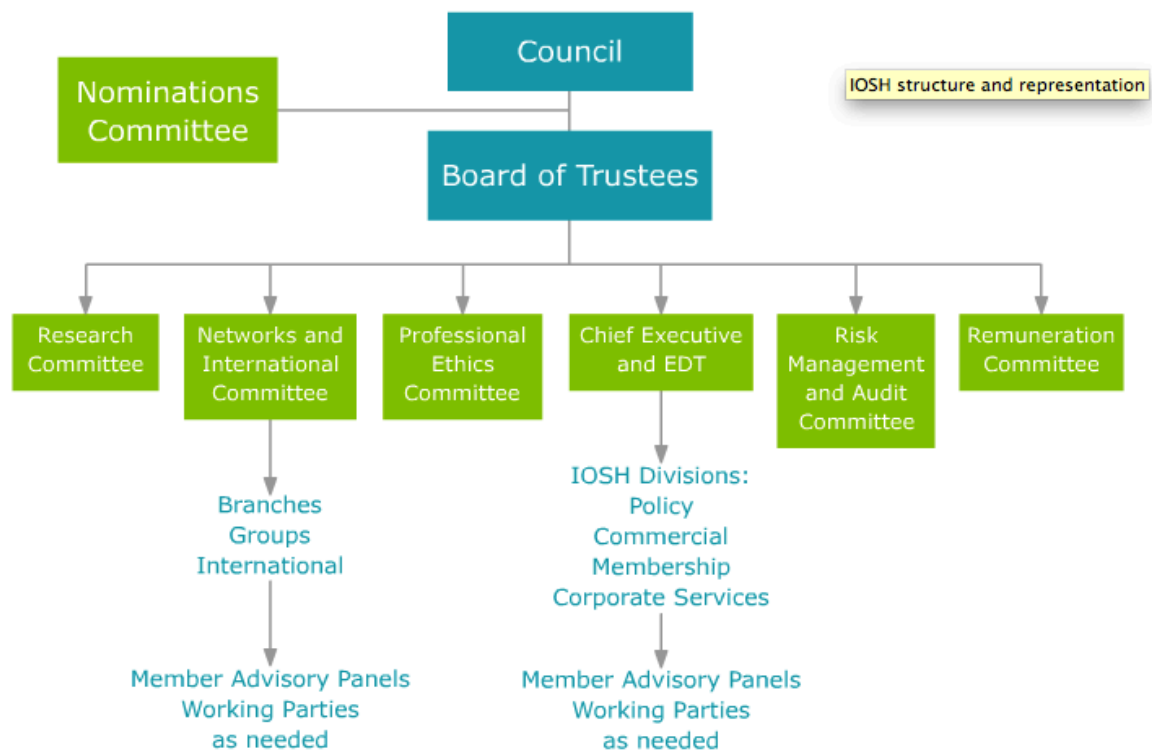


Figure 1.1: IOSH Structure and Representation (IOSH 2010b)

The structure was simplified in 2010 and the Professional Committee was renamed the Professional Ethics Committee to acknowledge its core function of being

Responsible for upholding the IOSH Code of Conduct and developing and recommending changes to the Code as and when required. It will consider all allegations of misconduct referred to under the disciplinary procedure and refer allegations to a Disciplinary Committee when appropriate as well as develop guidance relating to ethical considerations and dilemmas that may be faced by occupational safety and health practitioners. (IOSH 2010b)

1.4 Professional Committee Terms of Reference

Among the terms of reference for the Committee (Appendix A) are requirements directly relating to the Code of Conduct. An extract is provided below:

Review and maintain the Code ensuring it reflects high standards and is comparable with best practice in other professional bodies. Recommend any

necessary changes for approval by BoT, after appropriate consultation with Council. Consider all allegations of misconduct referred to it by the Chief Executive under the disciplinary procedure, and refer allegations to a Disciplinary Committee when appropriate. (IOSH 2008, p.2)

The proposal to review the existing Code of Conduct was made to the PC on the 31st May 2008 with a follow-up on the 31st July 2008, a copy of the extracts from these minutes is provided at appendix C. Appointment to the PC is initially for a 3-year term and this provided a suitable window for the review, development and approval by Council for an anticipated launch in 2011/12. In 2010 the name of the Committee changed to the Professional Ethics Committee (PEC). The change in name was made to acknowledge the Committees core function on professional ethics that had emerged during the review process and the significance of this changed is discussed further in the project.

As a member of the PC leading on the project, my goal was to produce a revised Code of Conduct for the profession with appropriate guidance and a new disciplinary procedure. My role as leader of the project provided the opportunity to also be insider researcher within the context of also being a doctoral student (Robson 2002; Fox et al 2007). The original proposal to the Committee together with the established aim and outcomes of the project are presented with both of these contexts taken into consideration.

1.5 Project Aim

The aim of the project was to critically discuss and reflect on the process of leading, reviewing and developing a new ethical Code of Conduct, guidance and disciplinary procedure for the Institution of Occupational Safety and Health.

1.6 Research Questions

In determining the original proposal to the Committee a number of underpinning research questions were considered.

1. What are the deficiencies in the existing Code of Conduct, Guidance and Disciplinary Procedures?
2. What methodological approach should be taken to develop and launch the new Code?
3. What is the nature of the ethical dilemmas and conduct issues experienced by Professionals?
4. How do traditional and modern theories of professional ethics relate to health and safety practice?
5. What style of leadership is appropriate in fulfilling the aim of leading and developing a new Code of Conduct?

1.7 Products and Outcomes

It is anticipated that the following products and outcomes will arise:

1. A new Code of Conduct, guidance and disciplinary procedure.
2. Recommendations for a suitable dissemination strategy for the new Code, guidance and disciplinary procedure.
3. Development of a Higher Education syllabus for professional ethics in health and safety practice⁵.
4. Critical insight into the application of action research methodologies and leadership theory as it applies to real world projects.

1.8 Background to the Profession

To put the project in context some further background to the health and safety profession is provided below.

⁵ Prior to the start of the project in 2008 there was no syllabus relating to professional ethics or Codes of Conduct. As part of a parallel project the professional Committee published a new syllabus in 2010 that included learning outcomes on professional ethics and the Code of Conduct. The section on ethics in the 2010 syllabus was directly influenced by the Code development.

1.8.1 Institution of Occupational Safety and Health (IOSH)

IOSH was incorporated by Royal Charter in 2003 and as such achieved its long-term objective of becoming the main established professional body for health and safety. Critical to this was the aim of developing a membership population who are professionally qualified and assessed as achieving an acceptable level of competence. IOSH is not the only professional body in the United Kingdom for health and safety, however it is now considered the largest in the world (IOSH 2010b). The Royal Charter includes the objectives for which the Institution is established; these are set out in the extract below:

3. *The Objectives for which the Institution is established are -*

- 1) *To promote systematic and organised methods of improving occupational safety and health and to advocate, advise upon, disseminate, explain and advance the principles, methods and systems of their application at work generally;*
- 2) *To facilitate the exchange of information and ideas amongst the members of the institution and of other professional bodies in the field of occupational health and safety and to work together with other professional bodies in pursuit of mutual objectives; and*
- 3) *To do all such other things as may be necessary or desirable for maintaining and improving the profession status of members of the institution and of persons engaged in professions requiring a knowledge of the matters mentioned in paragraph (a) above;*

in the interest of the general public benefit(IOSH 2003, p20)

Health and Safety professionals typically come from a non-medical background, although it can be viewed as an allied health profession⁶. Practitioners typically enter the profession with a diverse range of skills ranging from engineering, security, general management or environmental health. The health and safety professional will have a broad range of skills and provide a wide range of professional health and safety services to all types of organisation. Essentially their goal is to generate and promote a positive health and safety culture in the workplace thereby assisting employers in meeting their legal duties. This represents a key role in providing advice

⁶ Occupational Health & Safety is sometimes confused with Occupational Health which is a secondary profession for nurses or doctors who diagnose and treat occupational ill-health. There is often overlap between the professions in practice and membership.

to employers on controlling occupational risks⁷ to prevent injury or ill health of employees or anyone affected by a work activity. In doing this the health and safety professional advises the employer to help them realise their moral obligations, legal duties and economic benefits of achieving good standards of health and safety. The profession has both benefited and faltered on this mixed professional background as educational courses have sometimes struggled to find the best-fit solution for this diverse range of backgrounds. The health and safety career has traditionally been a career of second choice, although recent evidence from IOSH suggests that individuals, predominately men at a ratio of 5:1, are entering the profession at a younger age as they begin to recognise the benefits of a career in the field (Jones 2005, p.29). As a discipline, occupational health and safety is wide-ranging and complex. It is inter-disciplinary covering law, management, engineering, risk analysis and general sciences. This wide-ranging and complex knowledge and skills requirement has led to an eclectic educational syllabus.

1.8.2 Practitioner Education

The education of the safety and health practitioner has for many years been primarily through the route of the professional diploma, awarded by the National Examination Board in Occupational Safety and Health (NEBOSH)⁸. The NEBOSH Diploma was long recognised by IOSH as fulfilling the academic requirement for full membership. As a young practitioner I qualified in this way in 1997 after sitting exams on law, management, hazardous agents and safety technology; the course was extensive and difficult with a high failure rate on examinations. Since then there has been a move away from this examined diploma route to a more diverse range of acceptable qualifications including National Vocational Qualifications (NVQ), undergraduate and postgraduate degree programmes. The recent incorporation of IOSH by Royal Charter has seen a shift in expectations towards a graduate profession with many employers seeking the benefits of a graduate educated professional. Graduates are perhaps seen as more adaptable although there is no published evidence to

⁷ Occupational risks can include - exposure to hazardous substances, work equipment, work at height, poor ergonomic design, psycho-social factors leading to work-related stress, slips and trips, violence and aggression, manual handling etc.

⁸ NEBOSH and IOSH were at one point the same institution. Subsequent governance required NEBOSH and IOSH to maintain independence and this saw the emergence of other IOSH accredited diplomas and degrees awarded from universities and colleges without necessarily being accredited by NEBOSH.

substantiate this assertion. The graduate professional is also more likely to attain more senior positions in industry and therefore command a higher salary than their diploma counterpart (Jones 2005, p.25).

1.8.3 Competent Advice

The legal requirement for an employer to have access to competent advice can be found in the statutory instrument entitled the Management of Health and Safety at Work Regulations 1999 (MHSWR) which is enabled by the Health and Safety at Work etc. Act 1974 (HSWA). The MHSWR was originally implemented into UK law as a result of the 1989 EU Directive 90/270/EEC. The MHSWR is seen as framework regulation that underpins the requirements of risk assessment, risk management and competence. It has been instrumental in raising the importance of the subject area in the minds of employers and has improved the working conditions of millions of employees (HSE 2010).

Members of IOSH provide competent advice to employers on all matters of health and safety that affect their employees and anyone else who may be affected by the work activities. The Approved Code of Practice (ACOP), HSE(2000) stipulates that the employer should ensure that managers are competent to carry out their task with regard to any health and safety responsibilities they may have. The definition of competence is not given here but does appear in regulation 7(5) in relation to the appointment of health and safety assistance as follows:

(5) A person shall be regarded as competent for the purposes of paragraphs (1) and (8) where he has sufficient training and experience or knowledge and other qualities to enable him properly to assist in undertaking the measures referred to in paragraph (1). (HSE 2000, p24)

The definition of competence has also been tested in case law, In particular in *Gibson v Skibs A/S Marina* [1966] and *Orkla Grobe A/B and Smith Coggins Ltd* 1966 defines a competent person as:

One who is a practical and reasonable man who knows what to look for and how to recognise it when he sees it (IOSH 2005, p5)

Competence is clearly a requirement for safety and health practitioners and the demonstration of an individual's competence is assessed by the professional body, through examining continual professional development (CPD) records of members. Competence is a complex issue and the provision of CPD needs to be flexible to adjust to societal, legislation, guidance changes and progress in the evidence-based knowledge on practice. It is on this basis that the final project subject area has been chosen. The implied needs of professionals and their development were identified at an early stage and it is through the requirement for continued practice and education of practitioners that the emerging need has been recognised in the area of professional ethics, and its impact on competence.

1.8.4 Misconduct & Termination of Membership

The disciplinary procedures accompanying the existing Code are regulations that are made under Byelaw 13 by the BoT (IOSH 2003, p32). Under Byelaw 5 (IOSH 2003, p. 27) all Members are required to observe the Charter, byelaws and Code of Conduct, and sign an undertaking to do the same. Byelaw 8 outlines details relating to discipline including the definition of misconduct that is repeated in the disciplinary procedures as:

- a) Breaches one or more of the Code points; and / or*
- b) Brings them and / or other members and / or the Institution into disrepute; and / or*
- c) Is prejudicial to the interests of the Institution; and / or*
- d) Is contrary to a decision made, or sanction imposed under the disciplinary procedure (IOSH 2003, p.28)*

Termination of membership is also included in Byelaw 7 (IOSH 2003, p.28) which refers to Byelaw 8 in terms of misconduct but also includes resignation, failure to pay

annual subscription, is adjudged bankrupt or becomes a patient within the meaning of Part VII of the Mental Health Act 1983⁹.

1.9 Conclusion

The education, professional development and leadership of practitioners in the field of occupational safety and health has been the focus of my professional activity and formed the framework of this programme of study. The complex nature of the subject area and developments within the professional body revealed the gap in evidence-based knowledge on professional ethics as it contributes to IOSH policy, in particular the Code of Conduct, guidance and disciplinary procedure. A fit for purpose Code of Conduct, supplemented with suitable guidance that is also integrated into education and CPD, is of considerable importance at a time of increasing scrutiny on the profession.

⁹ The Mental Health Act 2007 now replaces the Mental Health Act 1983 and as such the meaning of a patient has changed. This issue is discussed as part of the general review of the Code of Conduct.

CHAPTER TWO – LITERATURE REVIEW

2.1 Introduction

In this chapter I provide a brief review of the extensive literature on ethics and professional ethics. The review concludes with an overview of the literature on Codes of Conduct, including the work of the Professional Associations Research Network (PARN) that has, in some part, informed the benchmarking aspects of the project. In addition a brief review of the literature relating to leadership is also included to underpin the role of the insider researcher as leader of the project. As a relatively young profession compared with more traditional professions such as law or medicine, safety and health practitioners are still establishing themselves as professionals in their own right. As such there is little written on the ethical landscape of their practice. The literature review therefore seeks to examine the broader literature on ethics and professions as it pertains to the project to provide an underpinning theoretical base from which to explore phenomena as they emerge.

2.2 Ethics

Ethics is the philosophy of human values and is largely concerned with the study of distinguishing right from wrong (Eby 2000). Singer (1994) provides further definition of ethics as:

A set of rules, principles, or ways of thinking that guide, or claim authority to guide, the actions of a particular group (Singer 1994, p4)

Singer describes how the terms ethics and morals are traditionally synonyms, however morality has developed a different inference in modern times.

Morality brings with it a particular, and sometimes inappropriate, resonance today. It suggests a stern set of duties that require us to subordinate our natural desires- and our sexual desires get particular emphasis here - in order to obey the moral law. A failure to fulfil our duty brings with it a heavy sense of guilt. Very often, morality is assumed to have a religious basis (Singer 1994, p.5)

In this project the terms ethics and morals will be used interchangeably to avoid the inference of any religious basis or sense of guilt.

The history of western ethics is grounded in Greek philosophy; Socrates had the teleological view that humans have a purpose or function and in the main people do not do wrong knowingly. Socrates allegedly went to great lengths to encourage young people to question conventional state morality in examining this principle (Gottlieb 2001). Socrates's most famous student was Plato (c. 428-354 B.C.) whose well-known work "*The Republic*" raised questions on moral philosophy that still have relevance in our modern society (Williams 2001). Plato was a rationalist who believed that real knowledge emerged from reasoning. Clearly there is a wide range of ethical beliefs and practices between societies, and history has demonstrated how moral beliefs also change over time, often referred to as "moral relativism" (Vardy & Grosch 1994, p.231)). Moral relativism argues that there is no moral knowledge as such, only rules that are relative to the needs of society at that particular time. The opposition to this view argues that there must be a universal set of moral rules that are always true, for example the murder of babies is always wrong (Robinson & Garratt 2004). These philosophers are generally referred to as 'universalists', 'realists' or 'absolutists', according to Robinson & Garrett (2004, p.64). The universalists claim that there exists a universal set of moral rules, absolutists claim that these moral rules are compulsory and the realists argue that moral rules are a true kind of knowledge. There are many historical examples of how an absolutist view can lead to the legitimisation of what we now view as immoral acts by society, such as racial hygiene, human experimentation and slavery to name but a few extreme examples (Loue 1999 in Singer 1993, p.56). Ethical theory is a broad subject that has been debated in endless diatribe throughout the centuries. The traditional approaches to ethical theory fall under the broad heading of normative ethics. The two most influential of these are now discussed in terms of moral reasoning often referred to as a deductivist approach or top-down method.

2.3 Deontology and Consequentialism

Deontology and consequentialism are the two main groups in normative ethical theory (Lafollette 2000, p.165-205). The former relating to the duty to obey defined moral principles and the latter relating to the computation of cost and benefits to achieve maximum utility. The moral law of duty is often associated with Immanuel Kant (1724-1804), referred to as Kantianism. Kant suggested we should follow established moral laws even when they seem inconvenient or difficult (Robinson & Garrett 1999). Kant established what he called the “categorical imperative” that denotes an absolute, unconditional requirement that asserts its authority in all circumstances. The opposing view to this is ‘consequentialism’ or its more commonly known subset ‘Utilitarianism’ often associated with the early work of Jeremy Bentham (1748 – 1832) and John Stuart Mill (1806 – 1873) (Robinson & Garrett 1999). Generally the theory is associated with the goal of happiness or maximum utility where the person sacrifices their own interests only if this is likely to benefit the majority or general good (Seedhouse 1998, p43).

The utilitarian approach appears rational. However taken to its ultimate conclusion the rights of individuals and minorities may be sacrificed for what is perceived as the greater good. Both approaches can conflict with each other in the pursuit of doing the right thing, largely due to conflict between what is considered to be the right thing. For the deontologist the right thing would be to follow a moral principle such as telling the truth without exception. This could lead to problems when considering the morality of deception in clinical trials where placebos are used, the utilitarian would not be constrained in the same way as the right thing would be to maximise utility which would permit deception for the greater good. The opposite may also arise where the utilitarian approach may justify the ending of the life of a terminally ill cancer patient to ease suffering which could lead to the justification of acts that the deontologist approach would not permit where a principle that values human life is paramount.

Singer’s (1993) study on practical ethics provides many examples of this conflict between these areas of normative ethics through examples drawn from the real world. The conclusion being that adopting a singular normative approach to solving

ethical dilemmas in the real world is fraught with further dilemmas brought about by the complex nature of real world issues. Utilitarianism is one of the most favoured approaches in modern society (Tallmon 1995 p.377). One of the reasons given by Taylor (1989 p223) is that it appears to fit rational validation that emerged in the 17th century along with the scientific revolution. Traynor (1999, p16) when discussing MacIntyre (1985) and his views on Weber highlights the failure of utilitarianism arguing that moral judgments have become simply personal preferences of attitudes or feeling rather than rational products of reason and rationality. It would appear that both paradigms have their limitations in practice and neither provides a singular solution to how one ought to act in any given circumstance.

2.4 Ethics and Religion

Deontology can be found in religious belief commonly referred to as the divine command theory that requires a person of religious faith to obey God (Murphy 2008). Plato in his early work 'Euthyphro' famously refutes the use of God as source of ethical rule setting (Allen 1970). The logical argument on whether an action is morally good because God commands it, or does God command it because it is morally good? This presents an interesting challenge to this theory. Ethical requirements from God can vary considerably between religious scriptures and the interpretations of their meaning in modern day life, such as the morality of gay marriage to the acceptance or otherwise of abortion. One interesting consistency in the religious and atheist community is the persistence of the 'golden rule' (BHA 2011). The golden rule has appeared in most religious text in one form or another and has been cited by both eastern and western philosophers (BHA 2011). The concept is basically to treat other's as you would have yourself treated. This on the face of it appears rational and universal, however when considering the largely pluralistic world we live in it may be difficult to determine how someone else would want to be treated in any given circumstance. In simple terms if someone was in danger, such as drowning, you would consider whether you would want to be in that danger yourself and take the appropriate action, most people would want to be saved from drowning. However a complex situation would arise if a person were experiencing pain, but as a masochist was deriving pleasure from it. At this point the golden rule can break down.

Scientific understanding of religion's impact on moral psychological processes remains poor (Shariff and Norenzayan 2007, p.808). The authors conducted an experiment where each participant was given money and asked to decide how much they would be prepared to give away. There were 3 groups, one primed with religious values, the other with secular moral values and the third not primed. The results showed no significant difference between the religious and secular groups, however those that received no priming gave significantly less money away. The study concluded that people would behave more altruistically when they are reminded of higher moral ideals. This may come from religious belief or secular understanding of the ethical benefits of an action, possibly utilitarian in nature. It would be difficult to ignore the influence that religion may have on individual actions, law and policy in modern society. However it is necessary to acknowledge that a basis for ethical decision-making can and often does exist independently of religious belief.

2.5 Law and Ethics

The ethics of law is introduced here largely to recognise that health and safety practice is heavily regulated in the UK, and that law and ethics are often seen as the same. Many practitioners will study Health and Safety law, interpret it and implement the requirements required by law into the workplace environment. It could be argued therefore that following the law is a demonstration of the moral virtue justice. The ethics of law is discussed by Singer (1993), who raises the question of whether we have an overriding obligation to obey the law. He provides a well-known, historical example of the famous German industrialist 'Oskar Schindler' who saved the lives of over 1100 people during the holocaust. Schindler essentially broke the law of that society at the time to achieve a commendable moral cause. Singer (1993) points to many examples of where enforcement of the state's authority can often be met by resistance by individuals and in particular organisations. Singer (1993) argues that the best option to resolve this type of conflict is for individuals or organisations to do what they decide they "ought" to do not simply as the law dictates; anything to the contrary would be a denial of any capacity for ethical choice. The question of whether the law is always moral is a complex issue. Gardner (2009) captures this complexity.

It is possible for something to be morally correct yet unjust, or vice versa. This is because, although all considerations of justice are moral considerations, not

all moral considerations are considerations of justice. Not even all moral obligations are considerations of justice. There are also moral obligations of humanity, mercy, honesty, prudence, tolerance, etc. It follows that a certain rule or ruling found in the law, or indeed a whole legal system, may be morally correct but unjust, or just but morally incorrect. This being so, the law may claim to be unjust without claiming to be morally incorrect, or claim to be just without claiming to be morally correct Gardner (2009, p18-19)

The assumption therefore, by the Health and Safety professional in particular, that the law is both moral and just in every case may be a naive one born out of inexperience. A less experienced practitioner may be pedantic in their application of the law. The law itself, especially in health and safety can be at times difficult to interpret and apply in practice. A simple example of this would be the interpretation of the duty placed on the employer to provide a safe place of work, so far as is reasonably practicable. This requires an analytical approach to determine the degree of risk in terms of severity and likelihood against the cost of controlling it. This is not always a straightforward exercise and can lead to disagreement between practitioners, employers and enforcement authorities on what controls are acceptable. Another example would be the interpretation of phrases that appear in legislations such as 'suitable and sufficient'. In the Management of Health and Safety at Work Regulations 1999 an employer is required to complete suitable and sufficient risk assessments, again there is room for some disagreement on what this actually means in practice. A moral practitioner may view an adherence to justice and the law as a virtue and as such find it distressing when it is uncertain how to fulfil this requirement. A less experienced practitioner may see the law as a moral guide only to feel let down when it does not provide the certainty they require due to inexperience. The more experienced professional would have become more comfortable with the interpretation of the law and as such would have more sophisticated schemas, perhaps opening up dilemmas not previously recognised in practice as a way of confidently challenging the law.

2.6 Virtue Ethics

Virtue ethics is a rival to the traditional normative ethical theories of deontology and utilitarianism. It takes its inspiration from the Aristotelian understanding of character and virtue. Oakley and Cocking (2001, p9 - 24) discuss six claims that appear to be features of this theoretical approach, namely:

1. An action is right if and only if it is what an agent with a virtuous character would do in the circumstances.
2. Goodness is prior to rightness.
3. The virtues are irreducibly plural intrinsic goods.
4. The virtues are objectively good.
5. Some intrinsic goods are agent related.
6. Acting rightly does not require that we maximise the good.

Oakley and Cocking (2001, p3) describe consequentialist and deontologist¹⁰ as impartial ethical theories as opposed to virtue ethics that seeks to recognise human goods. Hursthouse (2010) states that virtues are character traits that are:

...a disposition which is well entrenched in its possessor Hursthouse (2010, s2)

How these virtues become entrenched is an interesting question, both Hursthouse (2010) and Oakley and Cocking (2001) acknowledge that experience or practical wisdom makes an important contribution as to what virtues become entrenched.

There is a primacy to the character of the individual when determining whether an action is right or wrong. The character of an individual may change with experience with virtues becoming more deeply entrenched and reinforced as practical wisdom develops. The internalisation of correctness or excellence by a person is explained by Oakley and Cocking (2001, p.25) as a *“Regulative Ideal.”* The authors go on to discuss that a regulative ideal may be specific to a particular role, such as what it

¹⁰ Oakley and Cocking (2001) use the term Kantianism however I have opted for the broader term deontology. The same can be said for utilitarianism and consequentialism, I have opted for the latter to capture all theories under this heading.

means to be a good doctor or perhaps in our case a good health and safety professional. These role specific regulative ideals will be different or separate from general regulative ideals however they are unlikely to conflict with them.

2.7 Ethical Pragmatism

Ethical pragmatism is often associated with Charles Sanders Peirce, William James and John Dewey (LaFollette 2000, p.400). It is described by LaFollette as:

A pragmatic ethic employs criteria without being criterial. It is objective without being absolutist. It acknowledges that ethical judgements are relative, without being relativistic. And it tolerates indeed, welcomes some moral differences, without being irresolute. (LaFollette 2000, P.400)

The ethical pragmatist is therefore not limited to any particular normative theory of ethics and recognises that different situations with unique particulars will often require considerations using multiple approaches. There is considerable uncertainty in the real-world which some from a positivist perspective would find uncomfortable. Dewey (1988) takes up this point by stating:

In morals a hankering for certainty, born of timidity and nourished by love of authoritative prestige, has led to the idea that absence of immutably fixed and universal applicable readymade principles is equivalent to moral chaos. (Dewey 1988 [1922], p.164)

Dewey (1988 [1922], p.184) goes onto discuss the utilitarian approach as being a positive development in normative ethics, however he is critical of wholly relying on the approach when faced with complex situations. His concern being that a utilitarian approach may lead to excessive individualism that fails to consider broader societal needs. The ethical pragmatist will be necessarily situated in the real world and as Hume and many others point out, ethics is a practical and not simply a theoretical discipline and should be examined empirically (Baillie 2000, p.15). The study of practical ethics should ideally influence actions and, on a larger scale, social policies. According to Tallmon (1995, p.377) practical approaches to studying ethical issues

are becoming popular where traditional philosophical systems of enquiry have dominated for over 300 years, perhaps to fulfil a social need for more relevant ethical understanding.

2.8 Phronesis

In examining the practical world ethically we need to go back to our concepts of practical wisdom and regulative ideal as previously discussed in virtue ethics. Taylor (1989, p.125) argues that we cannot characterise situations in the real world by using general rules, as would be the case in traditional ethical theory. Taylor (1989, p.125) describes Aristotle's *phronimos*, the practically wise man who intuitively knew how to behave in any particular situation without the need to reduce a situation to knowledge or general truths, as would be the case with *Sophia the goddess of wisdom* more commonly referred to when discussing theoretical wisdom. This practical wisdom referred to by Aristotle is known as '*phronesis*'. The concept of phronesis is useful when studying practical situations, as Flyvbjerg (2001, p.214) states when discussing phronetic social science, the approach will rely less on traditional theories, analysis, and universals and more on the context, practice, experience, common sense, intuition, and practical wisdom or phronesis. The concept of phronesis would appear to be analogous with that of the expert as described by Dreyfus and Dreyfus (1986) following their research on chess players and airline pilots. The model proposed by the Dreyfus brothers identifies 5 levels of skills acquisition.

1. Novice
2. Advanced beginner
3. Competent
4. Proficient
5. Expert

The defining trait here is not having declarative knowledge but rather procedural knowledge where the knowing how is more important than the knowing what. The mode was used as a basis for mapping health and safety competencies when developing the undergraduate and postgraduate degree programmes. In the mapping exercise a qualified chartered practitioner was mapped against the

competent level, leaving the proficient and expert levels for those with further experiential learning. As Eurat (2004, p.124-125) describes at the expert level a practitioner would no longer be relying on rules, guidelines or maxims. They would have an intuitive grasp of situations based on deep tacit understanding, in other words they would be demonstrating a state of phronesis.

The analogy could be applied to other levels, for example a novice or advanced beginner may exhibit ethical behaviours that would fit either of the ethical theories discussed, however they would be unlikely to be aware of this. A competent or proficient practitioner may exhibit ethical decision-making behaviours that would be more in line with ethical pragmatism using various approaches to fit the situation more appropriately than would the less experienced practitioner. The model or paradigm-box in Figure 2.1 has been created to represent how the ethical theories discussed may relate in practice. Guba and Lincoln (1989) provide a useful definition of a paradigm as;

...a basic set of beliefs, a set of assumptions we are willing to make, which serve as touchstones in guiding our activities. Guba and Lincoln (1989, p.80)

Many of our institutions from government and religion to economics operate on the basis of a range of paradigms sometimes shared and sometimes not. Paradigm boxes have been used to represent ontological and epistemological positions in research, for example Burrell and Morgan (1979, p29) use this technique to present a 4 way relationship in social science research philosophy as a grid in which the researchers can position themselves when considering the most appropriate research approach. In the same way Figure 2.1 presents the ethical theories as a paradigm model which represents a progressive transition from detached ethical positions on the outside to more complex and integrated ethical positions on the inside. The practitioner becomes more expert through experience so their ethical decision-making will become more blended peaking at the hypothetical practical wisdom of phronesis. Schön (1991) describes knowledge in this situation as either being 'technical rationality' or 'tacit knowledge' with technical rationality being associated with empirical science, whilst tacit knowledge is described, in terms of what Polanyi (1967) describes, as being a way of knowing and understanding that

which cannot be articulated, but which guides practice and is linked to experiences and expertise.

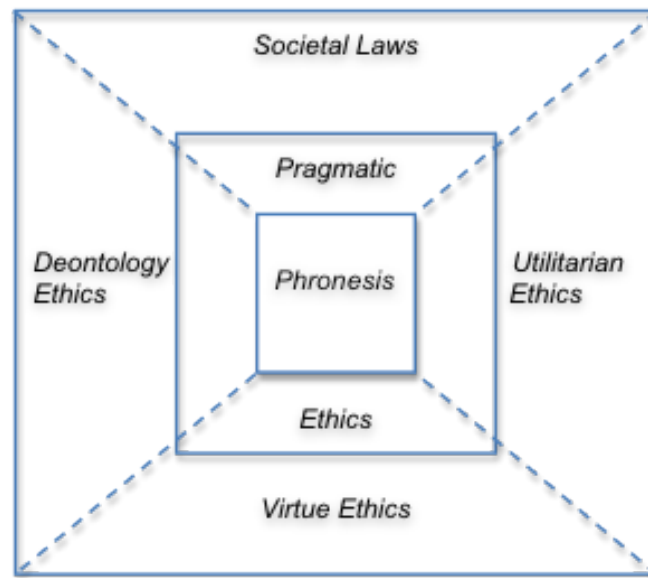


Figure 2.1: Proposed Ethical Theory Paradigm Model

Societal laws have been included as a segment. Although not an ethical theory as such, laws can be seen as moral guides (Gardner 2009, p.18). All practitioners even novice ones would be likely to exhibit the virtue of justice and would therefore find some reassurance in knowing that they were complying with the law. Health and safety is a heavily regulated area and a novice practitioner will rely on the law in determining what is required and act accordingly. This is perhaps a simplistic view of practice and does not necessarily recognise the complexity of the real world. In reality having found out what needs to be done to comply with the law, the health and safety professional is then faced with the challenge of how to implement the requirement in the real world environment, requiring more complex decision making and potential exposure to ethical dilemmas. As discussed the practitioner maybe unaware of ethical dilemmas or how a particular situation relates to a particular theory. This has the potential to lead to conflict between the practitioner, employer and even society.

The question 'why act morally?' is usually pre-supposed and not normally questioned by society or individuals. Societies and individuals usually adopt a range of ethical principles such as the rich should support the poor or the strong assist the weak. An alternative philosophy maybe 'I ought to do whatever benefits me', a philosophy which may not be overtly admitted to but may however exist particularly amongst organisations who are often seen as self-interested. Seedhouse (1998, p95) calls this self-interested approach, 'moral egotism' a form of relativism that is often associated with economic theory. This form of relativism can be seen in practice where cost and resource are used to balance out the moral decision making process. A concept familiar to most safety and health practitioners working in commercial environments is advising employers as to what is 'so far as reasonably practicable'¹¹ in meeting their obligations under current health and safety law, by balancing up the relative costs of control against the risk presented.

2.9 Professional Ethics

Koehn (1995, p.1) opens with a challenge by George Bernard Shaw that all professions were conspiracies against the laity. Koehn goes on to acknowledge that much has been written about the professional lust for power, privilege and wealth (Hall and Lindsay 1980, Moore 1970 and Reader 1966). Koehn rebuts these claims by rationalising that professionals aim to genuinely help others, or more specifically their clients. However, like parents they are not permitted to do anything to achieve this, using the analogy of a parent murdering another child who maybe in the way of their own child's progress to illustrate the potential unethical consequences of such limited thinking (Koehn 1994, p3). Doctors, lawyers and member of the clergy are often considered traditional learned professions and as Koehn (1994, p.13) points out are often considered paradigmatic by other professions or practices.

Traynor (2004 p125) discusses how the nursing profession has been critical of the science model that is universally applied to medicine as it does not do justice to its,

¹¹ The phrase "so far as is reasonably practicable" is not defined in the Health and Safety at Work etc. Act 1974. You need to refer to case law, in particular *Edwards v. National Coal Board* (1949) in which a minor was killed when a section of road he was travelling on subsided. The argument by the coal board that the cost of supporting all roads was prohibitive was not successful. The principle is if the consequences and the degree of risk are small and the cost of the measures to reduce the risk is very expensive, it would be unreasonable to incur that cost.

...complexity and often subtle, intuitive character. Traynor (2004, p125)

Traynor (2004) goes on to discuss how nursing as a profession is viewed as being under the control of the medical profession (p126).

The Health and Safety profession would also arguably see itself as consisting of complexity and subtle intuitive character analogous to nursing. Although, not under the direct control of another profession, as in Traynor's (2004) assertion about medical profession. The health and safety profession consist of members from other more established professions such as engineering, law and the sciences. These backgrounds bring with them underpinning cultural perspectives which in the absence of any strong professional identity for Health and Safety can have strong influences on the profession. Taking law as an example, this may be seen as a superior profession in the same way that medicine is sometimes seen in relation to nursing. This in turn could have a negative effect by failing to recognise the complexity and subtlety of real world practice where the law is only one aspect of ensuring safe and healthy behaviours in the workplace. Law however has its comforts; it is mainly written down, has authority and is assumed to have morality at its heart.

Health and safety practice can be seen within the context of what Schon (1991, p.168-169) refers to as 'technical rationality'. Practitioners addressing health and safety problems will be technical problem solvers and their education has endorsed this approach by being underpinned with predominantly scientific content. The potential consequences of this approach to follow embedded techniques whatever the consequences is further discussed by Koehn (1994, p.180-181) who indicates that this may cause tension between professionals and clients who dislike or even become fearful of the consequences of this approach. The unpleasant reality here is that the recent bad press coverage of health and safety, as outlined in the news (Independent 2010) may be corollary to this claim.

The term profession requires some definition, for Friedman (2007, p.22) a professional implies being qualified to carry out an occupation. The UK Inter-Professional Group (UKIPG) provides a definition of a profession as;

...an occupation in which an individual uses an intellectual skill based on an established body of knowledge and practice to provide a specialised service in a defined area, exercising independent judgement in accordance with a code of ethics and in the public interest (UKIPG 2002 p.6)

UKIPG goes on to endorse the requirements for the regulation of professional bodies in maintaining the public trust by stating:

...to assure the quality of professional services in the public interest. The regulation of a profession involves the setting of standards of professional qualifications and practice; the keeping of a Register of qualified persons and the award of titles; determining the conduct of registrants, the investigation of complaints and disciplinary sanctions for professional misconduct. (UKIPG 2002,p.6)

The UKIPG go on to emphasize the importance of maintaining professionalism by following codes of conduct whilst achieving and maintaining competence in providing their services.

It is reasonable to expect that professional behaviour should go beyond simply obeying laws, rules and technical literature. As the Institute of Chartered Accountants for England and Wales (ICAEW 2007, p.2) point out, professional activities involve a commitment to do what is right, as well as merely what is allowable. The majority of established professions have a commitment to act ethically and in the public interest as part of their general ethos (Fournier 1999, p.281). As a professional therefore, one must behave ethically as a basic societal expectation but also as Koehn (1994, p.175) puts it, exhibit themselves as worthy of trust. Koehn (1994, p.174) also concluded that professions provide much of the disciplinary framework around which liberal democracies organise themselves.

2.10 Rules, Principles and Codes of Conduct

It could be argued that to have any form of collective professional identity the profession must have rule, principles and Code that govern behaviour and service. As Friedman *et al* (2002) states;

Ethical standards are integral to the nature of professionalism (Friedman et al 2002, p.5)

Ethical standards are usually articulated in the form of codes of ethics or conduct. Friedman *et al* (2002, p.13) describes the subtle difference between a code of ethics and code of conduct. The code of ethics is an embodiment of core values with little direction, whereas a code of conduct is more regulative in its approach with rules or code points to adhere to. It would be expected that professions present their codes based on some underpinning moral theory. Gert (2004, p.20) presents 10 moral rules not necessarily limited to professions. He acknowledges the limitations of these as absolute rules by conceding that each of the rules can be broken with sufficient justification to warrant any harm that could have occurred as a result. The rules are:

1. Do not kill
2. Do not cause pain
3. Do not disable
4. Do not deprive of freedom
5. Do not deprive of pleasure
6. Do not deceive
7. Keep your promise
8. Do not cheat
9. Obey the law
10. Do your duty

Alexandra and Miller (2009, p.50) pick up on the problem of rule setting by disagreeing with Gert. They assert that there should not be a basic rule to obey the law, claiming that laws do not generate moral obligations. Singer (1993) and Gardiner (2009), as previously discussed, would agree. Whilst we assume the UK laws are inherently moral the same cannot be said for societies which permit the stoning of women for adultery, where adultery is seen as a religious crime punishable by a cruel and inhuman death (BBC 2009). Friedman (2007, p38) suggests that Gert's rules can be simply summarised as the first five referring to an obligation not to cause harm and second five not to violate trust. Gert (2005, p.283) stresses that although the second five can be associated with virtues it would be wrong to think of the first five in the same way stating:

For no one deserves praise simply for never unjustifiably causing harm to others Gert (2005,p.283)

Moral principles are often used in codes of conduct and are central to what Loue (2000,p.58) describes as principlism. The approach of principlism is commonly found in the United States and based around four principles (Beauchamp and Childress 1994):

1. Respect for Autonomy
2. Non-maleficence
3. Beneficence
4. Justice

According to Green (1990, p.188) principlism does not have a clear theoretical foundation to support it, although it does appear to have some following. Humphreys (1999) draws on principlism in developing a professional ethic framework, adding truth-telling and promise-keeping and aligning them to clearly defined duties.

Table 2.1: Humphreys Moral Principles adapted from (Patankar *et al* 2005, p4)

Principle	Duty
Autonomy	Respect the autonomy of others
Non-malevolence	Not to inflict harm on others.
Benevolence	Promote good to others.
Justice	Give others what is owed or due to them (what they deserve).
Truth-telling	Disclose all relevant information honestly and intelligibly.
Promise-keeping	Be faithful to just agreements, honour contracts.

The European Council of the Liberal Professions, CEPLIS (2007, p.2-4) published a list of specific values that all liberal professions should exhibit. The list was compiled following an extensive questionnaire survey across inter-professional groups and mono-professional organisations in the EU. The provisions that should be included, according to CEPLIS (2007,p.2) are list below:

1. Confidentiality
2. Participation in Continuous Professional Development
3. Independence and Impartiality
4. Honesty and Integrity
5. Supervision of Support Staff
6. Compliance with Codes of Conduct and Practice
7. Professional Liability Insurance
8. Conflict with Moral or Religious Beliefs

The CEPLIS values and Humphrey's moral principles although articulated differently are actually compatible. The UK body the Professional Associations Research Network (PARN) has written extensively on the subject of ethical codes (Friedman *et al* 2002, Friedman *et al* 2005, Friedman 2007). PARN has developed a matrix for assessing codes based on the following broad categories:

1. Good citizen
2. Expertise/Competence
3. Character values
4. Conduct: People

5. Conduct: Business
6. Conduct: General

Under each broad category is a list of criteria that can be used to assess a code and identify gaps. In a report to the Financial Services Authority, Friedman *et al* (2009, p13) discuss the PARN 3 pillars of professional standards, namely;

1. Entry Standards
2. Complaints and Discipline
3. CPD and Positive Supports (for ethical behaviour)

The 3rd pillar is described as a modern pillar, being distinct from the first two in that it is a departure from what Friedman *et al* (2009, p.13) describes as “*regulation by exception*”; a reactive way of regulating professional activities by waiting for a complaint. The alternative being a proactive approach of monitoring with evaluation of practices by both the practitioner themselves and the profession. PARN’s definition of a professional body includes the requirement for a Code of Ethics or Conduct (Friedman, 2007). Friedman goes on to explain that ensuring that the code is accessible to both the public and profession is important. For the public the code should be easily accessible on the website and in leaflet form, and also written in easy to understand language. For the professional this may include case study examples, training and oath taking (Friedman 2009 et al,p.38).

The Committee on Standards in Public Life, also known as the Nolan Committee after its initial Chair Lord Nolan, was set up in 1994 in the context of a number of highly publicised cases and allegations of misconduct by politicians. To date the Committee has published ten reports on an increasingly broader remit and has, according to its own judgment, been quite successful in that around 80% of its recommendations were accepted and implemented by the Government. The Committee has provided principle headings to provide a framework for standards in public life (Nolan 1995). There are seven principles:

1. Selflessness
2. Integrity

3. Objectivity
4. Accountability
5. Openness
6. Honesty
7. Leadership

The Nolan Committee (1995, p.2) also recommend that these principles should appear public in body Codes of Conducts and that there should be independent scrutiny of these, with education related to the principles. Not all the principles recommended by the Nolan Committee are relevant to the health and safety profession and they do differ from those recommended by CEPLIS (2007, p.2-4) in several areas by using terms such as leadership, openness, accountability, selflessness and objectivity which although specifically relevant to public service may not be as explicitly relevant to professional bodies. Openness, accountability and objectivity could arguably be gathered up under a more general service heading of perhaps, competence. They do however provide a useful benchmark in addition to that of PARN and CEPLIS from which to work.

2.11 Particularism

To provide some balance to the moral generalist tendency towards principalism, I introduce the work of Jonathan Dancy an avid particularist who argues that there is no necessary role for moral principles when making moral judgements. The notion that moral agents must have defined principles and without them would be unethical and untrustworthy is incorrect (Dancy 2004, p1-2). As Dancy states on the dangers of adhering too rigidly to moral principles;

I suggest that morality can get along perfectly well without principles, and that the imposition of principles on an area that doesn't need them is likely to lead to some distortion (Dancy 2004, p2).

Dancy implies here that by referring to the imposition of principles on areas that do not need them there may be areas that do in fact need them. Dancy is arguing that the moral landscape is context specific and that a blind adherence to rigid principles

would invariably result in a mismatch. This is the main criticism of moral generalism. For example, Dancy (2004, p.15) argues that the errors of generalism are in fact errors in the theory of reason, in that all reason is grounded in principles of reason.

Dancy's work provides us with caution in using principles as the unique foundation for moral reason. A more pragmatic approach would be to allow for context specific deviation from principles allowing a more holistic approach to decision making. A simple solution is to provide practice-based guidance for articulate principles to demonstrate the variation in interpreting them in a real world context.

2.12 Ethical Competence

Ethical competence is different from general competence in the professional areas (Friedman 2006, p.2). Friedman identifies ethical competence along side knowledge, capacity to apply knowledge in practice and competence as four elements required in the professional community. Ethical competence for the professional manifests itself as the ability to apply knowledge ethically, usually as defined in Codes of Conduct. Friedman goes on to recommend that professions need to pursue ethical competence to ensure public trust and confidence in the professions (Friedman 2006, p.6).

Friedman (2007, p.61) defines five stages in the acquisition of ethical competence:

1. Personal capacity, disposition and motivation
2. Knowledge acquisition
3. Competencies
4. Technical competence
5. Ethical competence

Friedman (2007, p.62) goes on to explain that the stages do not necessarily happen in a strict order although ethical competence usually follows on from technical competence. Ethical competence is therefore arrived at following a period of experiential learning in applying one's technical knowledge. Friedman later expands on these stages by adding further explanation, for example technical competence is explained as a professional who has experience with several competencies, tacitly

knowing what works and technically reflective of their practice (Polanyi 1967 and Schön 1991). Hannabuss (2000, p.403) distinguishes between what he refers to as explicit conscious knowledge and tacit unconscious knowledge. In the case of unconscious knowledge, according to Hannabuss, it is unconscious because we have no knowledge of it or we have become so familiar with it that we no longer see its existence. Friedman in discussing tacit knowledge and practice draws on the concept of reflective practice by acknowledging Schön's (1983) original contribution and providing his own four aspects of reflectivity as it could relate to ethical practice (Friedman 2007, p.75):

1. General awareness of one's self as a perceiving, thinking and acting individual.
2. Awareness of specific aspects of one's self in this context.
3. Assessment of how well one is doing with one's perceptions, thoughts and actions.
4. Taking a critical approach to the three previous aspects of reflectivity.

Friedman (2007, p.79) in discussing Schön's (1983, p.49) concept of reflection-in-action describes ethical competence as primarily being knowing-in-action where the experienced professional will not need to think about what they are doing but do what feels right. To temper the obvious shortfalls of this when very unique situations are encountered a reflection-in-action or practice approach is needed. Developing ethical competence amongst members of the profession is an essential element in moving the Code of Conduct from being a passive reactive document to a living relevant document that is engaged with by professionals and truly represents the professional activity. Hayland (1996, p.172) identifies that the required ethical and moral understanding is often ignored in competence based education and training. Hayland goes on to discuss Carr (1994, pp.47-48) who suggested that most problems professionals deal with require a moral rather than a technical response. In Carr's analysis the example of an unsatisfactory plumber in comparison to an unsatisfactory lawyer is discussed; the former usually cited for poor technical performance whereas the latter is more likely to be with service-led ethically principled issues that arise. The Health and Safety professional may sit between these extreme examples relying on both technical knowledge and ethical competence to achieve the best outcomes

in providing their services. Ethical competence may not necessarily be lacking as this may accumulate through experiential learning. However, without some formal educational underpinning, the route to achieving it will be varied and uncertain.

2.13 Decision Making Models

There are many approaches to professional ethics and decision making with many of them adapting the “Kohlberg’s Theory of Moral Development” (Beabout and Wennemann 1994) in which a framework for moral development was established based around 3 levels summarised in the table below:

Table 2.2: Levels of Moral Development adapted from (Patankaret al/ 2005, p4-5)

Level	Description of Stages
Level 1: pre-conventional morality	Stage 1: Individual obeys rules in order to avoid punishment. Stage 2: Individual conforms to society's rules in order to receive rewards.
Level 2:conventional morality	Stage 3: Individual behaves morally in order to gain approval from other people. Stage 4: Conformity to authority to avoid censure and guilt.
Level 3: post- conventional morality	Stage 5: Individual is concerned with individual rights and democratically decided laws. Stage 6: Individual is entirely guided by his or her own conscience.

More specific ethical decision making models have be posited widely in professional setting since the 1980’s, many focusing on the medical professional where ethical issues arise relatively frequently. 3 models attributed to 4 authors have been reviewed and summarised in Table 2.3 below;

Table2.3: Summary of a Comparison of Ethical Decision Making Models

Author/ Step	Rest (1986) Jones (1991)	Holm (1997)	BMA (2004)
1	Identify ethical problem	What personal experience tells us	Recognise ethical situation
2	Apply ethical reasoning	Ethical perception	Breakdown dilemma into parts
3	Establish moral intent	Ethical reasoning	Seek information from patient and others
4	Act ethically	Ethical decision	Identify relevant legal and professional guidance
5		Consideration of practical possibilities	If no solution found apply critical ethical analysis
6		Final decision	Justify decision with sound arguments
7		Implementation	

Rest (1986) and Jones (1991) present very similar simplistic models that are based on a moral reasoning approach, whereas the Holm (1997) and BMA (2004) models include situational aspects of the ethical problem that can create alternative actions. Holm (1997) begins by acknowledging that experiential learning may influence our ability to handle ethical issues by asking the decision-making agent to consider what experience has revealed previously. This is not an indication that one should always make decisions based on what has gone before, rather that experience may allow us to contextualise the issues more rapidly leading to enhanced ethical perception and reasoning than if there was no previous experience to reflect on. Holm (1997) also situates the decision in the real world by drawing the agent to consider practical possibilities. This permits the agent to consider options rather than fixating on a single ethical act. The BMA (2004) model also includes situational issues and goes further by providing an enhanced framework that includes breaking down the moral issue into parts, recognising that moral issues are rarely singular in the real-world. As a medical model a key step is to consult with patients and others, presumably colleagues, to gather as much information as possible before looking to professional and legal guidance in applying ethical reasoning. This interim step indicates that the medical profession has come a long way in documenting and analysing ethical

issues in medical practice that have underpinned guidance to help future decisions and ultimately avoid poor ethical decision making. The BMA (2004) approach does however recognise that new and novel ethical problems will arise from time to time and so provides the option of applying critical ethical analysis. Critical ethical analysis is not necessarily something that can be done casually with no prior education or experience and as far as these models go, the issue of competence of the decision-making agent will always need addressing.

2.14 Leadership

The literature relating to leadership is included to recognise my role as leader and insider researcher on this real world project. It provides some underpinning literature to inform the appropriate approach for the leadership process whilst also establishing the context for critical reflection at each stage of the research process.

Some of the key themes briefly explored here include leadership as a process of change, transformational leadership, authenticity, followership and learning.

2.14.1 Defining Leadership

Leadership has been a significant subject for reflection during the programme of study. Leadership is extensively written about and commented on both in the academic literature as well as in popular books proclaiming novel approaches to management and leadership that adorn the shelves of bookstores throughout the world. Much of the traditional writing of leadership has focused on the leader as an individual who exhibits certain measurable traits. A more modern view of leadership is to acknowledge the role of not only the leader but also the followers as part of a process. Northouse (2007) provides a widely accepted definition of leadership as;

...a process whereby an individual influences a group of individuals to achieve a common goal. Northouse (2007, p3).

Northouse (2007) goes on to describe a number of leadership styles, initially focusing on theories that concentrate on the individual as leader, such as the trait approach (p15 – 36) and then moving on to more modern theories such as transformational

leadership (p175-205) sometimes referred to as the new leadership paradigm (Bryman 1992).

There is much written about styles of leadership being contingent on the situation and these fall into the contingency or situational schools of thought described in the literature (Fielder, 1967 and Hersey & Blanchard, 1977). The situational context will have a bearing on goal in terms of its immediacy that can influence the approach taken. An emergency situation where time is of the essence may call for a more autocratic transactional approach whereas the creative development of a new product may allow for and indeed benefit from a more democratic approach. Tannenbaum and Schmidt (1958) when considering the individual's style, present a continuum from autocratic, through persuasive to consultative and finally democratic styles of leadership that may be favoured by individuals in certain circumstances depending on the immediacy of the issue at hand. In considering the group being led there needs to be some consideration as to how transformational the process needs to be. As Hawkins and Smith (2006) explain;

Leadership is not just a role we inhabit – it is also an attitude to life and its challenges. Leadership begins when we stop blaming others and making excuses when things go wrong. Leadership begins when we start to explore 'How can I best make a difference?' (Hawkins & Smith 2006, p239).

2.14.2 Followership

Obholzer and Millar (2004) bring the follower into focus stating that;

...followership is and must be an actively participative process. It needs to be differentiated from a passive, dependant state of mind of the individual or the group, and also from an uninvolved or not responsible state of mind...Obholzer and Millar (2004, p.43)

For example, in Storey (2004) the suggestion is of an implied lesser status of the follower and in texts such as Northouse (2007) the word 'subordinate' is often used to describe followers. This status issue for followers could have a significant impact on

the organisational culture and ultimately the success of leadership where followers are perceived in this way.

Drath (2001 p.9) states:

Someone who was a follower can become a leader if he or she has gained the most relative influence in the context of a changed environment.

Hersey and Blanchard (1977) indicate that the level of maturity of followers should be considered when adopting a style. At low levels of maturity more directive behaviour would be favoured and as maturity increases the style can move to a more relationship orientated approach

The relationship dimension in the leader-follower exchange is discussed in the literature on Leadership Member Exchange Theory (LMX) (Liden et al, 1997) where leaders often create special relationships with followers, often using tacit exchanges to develop these relationships with the goal of securing enhanced commitment to the overall objectives. Members are often part of an inner circle which in some cases can have a negative effect for those on the outside.

2.14.3 Transformational Leadership

The academic and presidential biographer James MacGregor Burns initially introduced the concept of transformational leadership. Burns defines leadership as:

Leaders inducing followers to act for certain goals that represent the values and the motivations – the wants and needs, the aspirations and expectations – of both leaders and followers (Burns, 1978, p.19).

Transformation leadership is not necessarily distinct from other theories on leadership. Bass and Riggio (2006 p.4) make the case for transformational leadership being an extension of the transactional leadership process. There is a continuum ranging from simpler leader follower transaction based on contingent

reward to higher levels of idealised influence, motivation, stimulation and consideration of the follower (p.5-9).

The charismatic aspect of the leader is also part of the transformational process and can have a positive impact. As Yukl (1999) suggests, although charisma and transformational leadership are often seen in much of the published literature as distinct processes, they are clearly linked. Charisma alone is unlikely to have a transformational effect, however the highly charismatic leader equipped with the right transformational skills will have a positive outcome on both followers and the organisation.

2.14.4 Authenticity

As Bass and Steidlmeier (1999) point out when considering the transformational leadership perspective, authenticity can be seen as a moral compass by which the intentions of transformational leaders can be determined. Bass and Steidlmeier (1999) go on to describe pseudo-transformational leaders where the leader is deceptively appearing to be moral. This feigned authenticity can have an impact on what Lord *et al* (1999) calls identity levels (individual, relational and collective) of both the leader and followers with reduced leadership effectiveness where there is mismatch between leader and follower identity levels. Authenticity is not an absolute state and as Argyris and Schön (1978) point out, an individual may be unaware of the incongruence between the theory in use and espoused theory. Leaders may therefore be unaware of their lack of authenticity, as followers perceive it. Authentic leadership as a distinct area is increasingly discussed in the literature with Avolio *et al.*, (2004) providing a useful working definition of leaders who are authentic as;

...those who are deeply aware of how they think and behave and are perceived by others as being aware of their own and others' values/morale perspectives, knowledge, and strengths; aware of the context in which they operate; and who are confident, hopeful, optimistic, resilient, and of high moral character. Avolio *et al.*, (2004, p.4)

Transformational leaders should create an authentic atmosphere and leave a lasting impression, as Grout and Fisher (2007, p.195) go on to say quite elegantly “in the

short term the artist may get the attention but it is the quality of the painting that really has the lasting effect.”

2.14.5 Distributed Leadership and Sustainability

There are many leaders, not just one. Leadership is distributed. It resides not solely in the individual at the top, but in every person at every level who, in one way or another, acts as a leader (Goleman, 2002:14)

A defining aspect of distributed leadership is that decisions about who leads is not dictated by where one sits in a hierarchy but rather by the situational needs of the problem or task (Timperley, 2005). It is based on this leadership model that the IOSH Professional Committee operates with members taking the lead on projects with the collaborative input of others on the Committee including the chair. Decision making in this environment is not derived from a single individual but from the input of all interested parties. There is a potential foreseeable inherent risk that leadership becomes thin and ineffectual. To avoid this, continual monitoring is required to monitor and evaluate the effectiveness of the project and make adjustments as required.

Sustainability in this context is about creating long-lasting success through effective leadership. The connection here to a distributed model of leadership is clear and the project may transfer to a new leader as it progresses to new stages of development and implementation. To have complete and unique ownership of the project and its product would potentially put in jeopardy the long-term sustainability of the project. Hargreaves and Fink (2006) writing on sustainable leadership in educational settings discuss 7 principles, listed in Table 2.4, below, that when followed can help ensure positive results.

Table 2.4: Hargreaves and Fink (2006) 7 Principles of Sustainable Leadership

Principle	Explanation
Depth	It preserves, protects, and promotes deep and broad learning for all...(p.23)
Length	It preserves and advances the most valuable aspects of learning and life over time, year upon year, from one leader to the next (p.55)
Breadth	It sustains as well as depends on the leadership of others (p.95)
Justice	Sustainable leadership does no harm to and actively improves the surrounding environment by finding ways to share knowledge and resources...(p.141)
Diversity	It fosters and learns from diversity and creates cohesion and networking...(p.159)
Resourcefulness	Sustainable leadership develops and does not deplete material and human resources...(p.191)
Conservation	Sustainable leadership respects and builds on the past in its quest to create a better future.. (p.225)

2.14.6 Concluding Thoughts on Leadership

The charismatic aspect of the leader can still however have an impact on transformational process, as Yukl (1999) suggests although charisma and transformational leadership are often seen in much of the published literature as distinct processes they are however often overlapping processes. Hannah et al., (2008) paper on leadership efficacy proposed an expanded framework that included not just the leaders' effectiveness but also efficacies as they related to followers and indeed collective efficacies. The attention therefore should be on the leadership process efficacy and not simply leaders' efficacy. The literature on authentic and transformational leadership, in particular May *et al* (2003), conclude that authentic moral leaders need to act with consistent moral behaviour to sustain effective leadership by demonstrating that they are both humble and are capable of recognising moral dilemmas.

Organisational cultures and the authenticity of the leadership process are connected. However, as Schien (2004 p.8) makes clear, culture is a phenomenon that is below

the surface; it can be a powerful force but is often invisible and unconscious. Various theories have arisen around motivating followers and developing successful teams to improve organisational culture. Path-goal theory for example (Evens (1970) and House (1971)), looks at leadership styles as they relate to followers as a way of motivating them. Leader-member exchange theory (Dansereau, Graeu and Haga 1975) examines the complex interactions between leader and follower, and team leadership models (Zaccaro et al 2001) discusses how leaders of teams construct a mental model of the situation that reflects the components of the problem but also the environmental and organisational contingences that define the context.

Leadership can also offer learning opportunities, as Antonacopolou and Bento (2004) state;

...leadership presents a window to inner learning. (Antonacopolou and Bento, 2004, p95)

Leaders can be learners who not only impart knowledge to followers but are also capable of seeking and learning knowledge from their followers.

2.15 Conclusion

The literature on the theory and history of ethics provides a solid underpinning from which to explore ethical practice and codes of conduct. As the basis for the IOSH Code development, its primary contribution is in establishing the theoretical position on which ethical decisions in practice are made. Through developer a deeper understanding of this position more relevant code points, and in particular guidance on those code points, can be developed. It is also apparent that ethical theory does not currently play a part in the education of health and safety practitioners. The review therefore provides a solid foundation from which to develop the educational content in ethics as it relates to theory and health and safety practice. The proposed ethical paradigm model shown in figure 2.1 provides the framework for the relationships between ethical theories that may form the basis for this education and future CPD.

The distinction between the two areas of normative ethics, which can be seen as impartial descriptions and virtue ethics which seeks to describe inherent character traits of a virtuous agent, is particularly useful in recognising the origins of many professional codes of conduct and ethics. In many ways codes of conduct or codes of ethics could be viewed as principles or rules in the same way as deontological ethics seeks to establish moral laws. In contrast to this, practitioners may find themselves taking a more consequentialist approach when dealing with real world problems that involve an analysis of activities in terms of the benefit verses risk. The profession as a whole will perhaps take a more holistic position by establishing the expected virtues of the professional in practice and communicating this message through the published code of conduct or ethics.

The subtle difference between codes of conduct and codes of ethics is usefully explained by Friedman *et al* (2002, p.5). The code of ethics will contain core values but have little direction whereas the code of conduct will be more regulatory in its approach. A code of conduct may very well contain an ethical code or expression of core values. A code of ethics alone, however, would never amount to a code of conduct due to its lack of direction and regulatory positioning. It is from this basis that the rationale for developing a code of conduct rather than renaming it as a code of ethics was made.

The content of the proposed IOSH Code was underpinned by the literature on professional ethics, values and codes. In particular, the moral rules established by Gert, the CEPLIS values for professions, the PARN matrix categories and the Nolan Principles all provided excellent benchmarks against which the existing Code was reviewed and the new Code developed (Gert (2004), Friedman *et al* (2005) and Nolan (1995)).

The literature on ethics and professions is extensive. Ethics as an area of moral philosophy has been subject to debate through the centuries. The discourse on professions and professional ethics is more recent and builds on the established literature to examine the professions as modern western phenomena that exists as part of our liberalised societies to provide services to clients. The professions are

generally educated, accredited and regulated by a professional body as a way of securing the public's trust and confidence. IOSH is no exception here and has developed to model itself as a relatively new profession with graduate membership and the recent award of Chartered status in meeting the demands of a modern society. More recently the professions have developed their codes of ethics or conduct to enhance this trust and in doing so have revealed areas for further education and professional development in ethics as it relates to practice. IOSH as a relatively new profession is now at the stage where it has recognised that there is a need to enhance its ethical standing during a time of increasing scrutiny. The literature therefore, not only provides an underpinning for the proposed Code, education and CPD but also makes a case for further examination of ethical theory as it relates to health and safety practice. As a profession we have focussed on what and how we do things but perhaps lack an understanding of why we do it. .

The review of the IOSH Code has come at a time when the profession has begun to make significant progress in enhancing the education and CPD opportunities for members with clear benefits to society in terms of standards of service. It would seem timely to embrace the progress made by organisations such as PARN in creating standards and benchmarks for professions to ensure that they remain fit for purpose and retain the public trust many have worked so hard to achieve.

The world of health and safety practice is pluralistic in an epistemological sense. There is no single consistent set of ethical truths that can apply to the real world practice. The health and safety professional may be faced with a variety of situations that demand a largely pragmatic approach. The public would expect the health and safety professional to have certain inherent virtues evidenced by ethical behaviour and included in codes of conduct. It has been posited that practical wisdom or phronesis is an advanced state at which the very experienced professional will have the ability to intuitively know how to act ethically. It would therefore be logical to assert that to promote this higher state of ethical competence, some foundation education and subsequent CPD in ethical practice would be desirable for this level of attainment, along with reflection on practice that includes ethical dilemmas as they arise.

Finally, the literature on leadership provided a useful foundation on which to explore, through reflection, my leadership throughout the project stages. Fundamentally the project involved the review of the existing Code and development of a new one but also significant organisational change. The project was more than the development of a document alone; it involved an organisational paradigm shift in relation to its strategy on professional ethics. The leadership of the project was therefore inherently transformational with a strong emphasis on authenticity and recognition that followers were active participants in the process. As indicated in the literature the maturity and expertise of the followers must be taken into consideration when deciding on the level of direction required. The relationships are likely to be more consultative than instructive, to allow new ideas to flourish in an authentic atmosphere of sustainable development.

CHAPTER THREE – RESEARCH METHODOLOGY

3.1 Introduction

This chapter provides the description and epistemological rationale behind the chosen methodology. The project was set in the real world environment involving the researcher as leader of the systematic review of the existing Code of Conduct and development of a new Code, guidance and disciplinary procedure. The researcher led the review as a voluntary member of the IOSH Professional Committee. Research in the real world as describe by Robson (2002, p.5), often requires an interpretative flexible approach to cope with unexpected and emerging issues or themes that can arise thus changing the course of the research whilst still achieving the overall aim. Taking into consideration the flexible nature of 'real world' research an iterative action research framework was adopted with collaborative inputs from IOSH.

3.2 Ontology and Epistemology

Before considering the methodology it is necessary to examine the relative philosophical paradigm in relation to the epistemology in question. As a practitioner with a background in science my education has been predominantly in the belief that the world is external and objective and can be largely measured quantitatively. Within health and safety practice for example, this can be demonstrated through the measurement of workplace parameters such as accident rates or levels of exposure to hazardous agents. This approach to quantifying workplace issues is derived from a positivist perspective (Easterby-Smith *et al* 1991, p.27). There are occasions however when reliable quantitative measurements are difficult to obtain and rationalise with judgments employed to inform decisions. This may include a combination of quantitative, semi-quantitative and qualitative sources although there is a tendency to try and avoid overly subjective decision making in favour of data rational approaches. There has, however, been an emerging interest in more qualitative phenomena such as human behaviour and culture as it relates to health and safety (HSE 2005). The area of professional ethics would fall into the difficult to quantify category or phenomena. To understand the nuances of practice it would be

inappropriate to engage in simplistic measurements, as this would do little to enhance our understanding of such phenomena.

With this in mind an alternative perspective would be to view the world as largely socially constructed and our perspective on it as generally subjective. It can be qualified but not always quantified; this could be described as a phenomenological position (Easterby-Smith *et al* 1991, p.27). This Constructivist paradigm according to Guba and Lincoln (1989, p.86), asserts that there are multiple, socially constructed realities that remain ungoverned by what positivists would describe as natural laws, causal or otherwise. In ontological terms, this would be relativist ontology. Individuals devise the constructions themselves, in our case the ethical dilemmas or conduct issues arising in practice, as they attempt to make sense of their experiences. In determining the truth in a social constructivist paradigm we cannot say that any finding defines reality correctly only that it is, as Guba and Lincoln (1989) state;

[Constructivist Paradigm is] the most informed and sophisticated construction on which there is a consensus among individuals most competent. Guba and Lincoln (1989,p86).

In determining what experiences are valid Crotty (1998,p.58) describes how different perceptions and unique experiences are equally valid and worthy of respect. In recognising that the area of study is within the constructivist paradigm a constructivist approach will be employed as described by Robson (2002, p27). In doing so, the methodology will utilise multiple data collection methods to give multiple perspectives on the issue of professional ethics in this area of practice. In order to make sense of this type of data Cohen *et al* (2001, p102), suggests that it should be classified, ordered, synthesised and then evaluated as an on-going process. To construct this understanding of professional ethics and underpin the development of the Code of Conduct an action research framework will be utilised.

Action research is a concept first described by Kurt Lewin, (Lewin 1946, p34), as a departure from traditional scientific methods, ensuring that knowledge produced by research produced organisational change and also recognising that through

researching change new knowledge may be discovered. O'Leary (2005) gives a broad definition of the action research process as:

...research strategies that tackle real-world problems in participatory and collaborative ways in order to produce action and knowledge in an integrated fashion through a cyclical process. (O'Leary 2005, p 190).

As the project tackled a real world problem and sought to be collaborative in nature producing knowledge and change, the action research process appeared to fit the circumstances well.

Action research was not the only approach considered. Alternatives to the research design may have included a case study approach with each aspect of development analysed as a separate case study coming together to provide a whole picture of development, or alternatively examining ethical case studies as the singular source of data from which to inform the development process. This approach, although useful, would perhaps have missed other aspects of the development process and may have even diverged from the process altogether. A singular focus on more traditional methods of interviews either qualitative or quantitative was also considered. Whilst having merit they again are perhaps too singular for a real world project and again may have resulted in a divergence from the actual development.

3.3 Action Research Process

The cyclical process for the project involved reflection and consultation with the major stakeholder at each stage of the research process followed by a plan for movement onto the next stage. Outcomes from previous stages thereby affecting subsequent stages.

The project involved mainly qualitative evaluation of non-numerical data. O'Leary (2005) in discussing the value of this type of data quotes Einstein:

Not everything that can be counted counts and not everything that counts can be counted. (O'Leary 2005, p.254).

The process of qualitative data analysis (QDA) can be rigorous in developing codes for eliciting themes. The QDA process is described by Jorgensen (1989) as the process of analysis that involves breaking up, separating, or disassembling of research materials into pieces, parts, elements, or units. Charmaz (1983) goes on to describe how the data may at first appear to be a mass of confusing, unrelated accounts and it is through the use of coding that the data becomes synthesized and sorted to create some order. There are two broad approaches to coding: objectivist and heuristic. An objectivist approach treats code words as condensed representation of the facts described in the data while in the heuristic approach code words are primarily flags or signposts that point to things in the data (Seidel and Kelle, 1995). The coding of qualitative data in the project adopted a heuristic approach throughout.

3.4 Research Design and Tools

To underpin the evaluation of the existing Code of Conduct, guidance and disciplinary process and development of revised versions, a combination of techniques were employed. As a starting point a benchmarking exercise with comparison against other professional Codes was undertaken. The rationale for this was to establish where the IOSH Code is now in terms of best practice, where the IOSH Code needs to be to meet the needs of both society and the profession, and lastly how the profession is going to develop the IOSH Code to meet the requirements of society and the profession. In addition to benchmarking there was regular consultation with the Committee members throughout the development process along with interviews with practitioners to establish the nature of ethical dilemmas in practice. Discussion and analysis of historical misconduct cases handled by the Committee was also used to contribute to the development process. Finally regular critical reflections were also recorded in a learning log and relevant extracts critically discussed at the end of each stage.

3.4.1 Triangulating Data

Methodological pluralism has been described in several works as being especially useful in empirical studies (Carter and New 2003, Danermark 2002, Sayer 2000). The application of different techniques to cast a multiple perspective on social phenomena is often referred to as triangulation. Cohen and Manion (2000) define triangulation as;

...an attempt to map out, or explain more fully, the richness and complexity of human behaviour by studying it from more than one standpoint(Cohen and Manion2000, p254).

Denzin (1978) identified four basic types of triangulation: data, investigator, theory and methodological triangulation. A combination of theory and methodological triangulation was employed; involving several methods to gather data on the phenomena to underpin Code development and ensure a strategy of convergent validity was maintained. The methods employed during the project are represented in Figure 3 below.

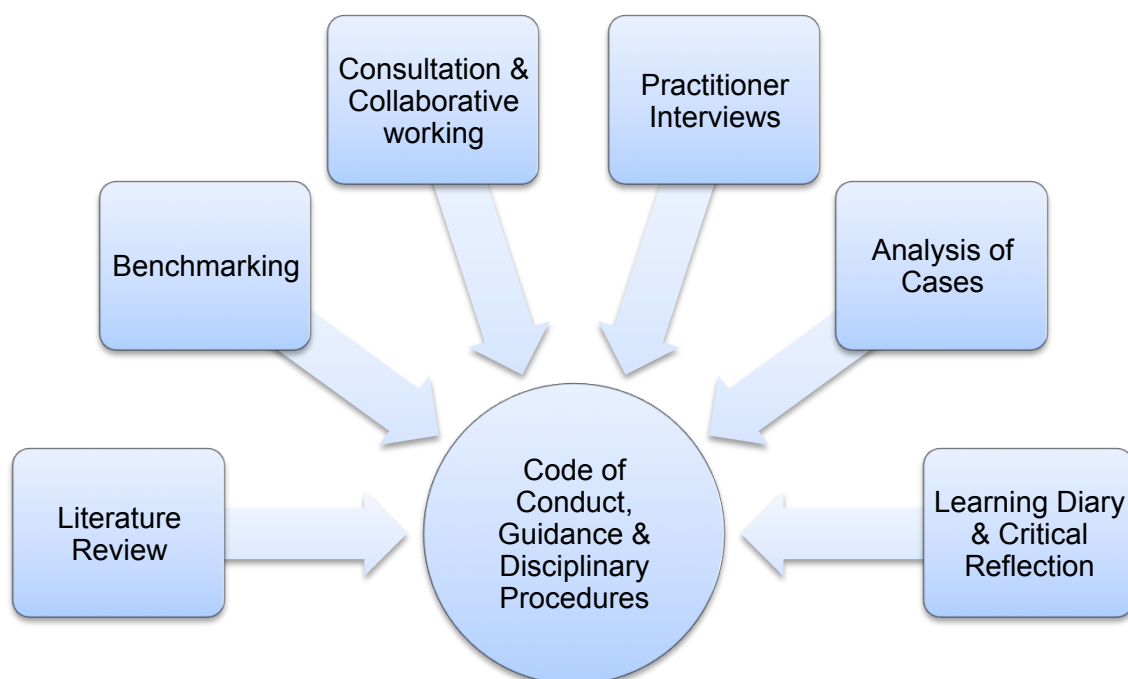


Figure 3.1: Methodological Triangulation of Information

3.4.2 Content Analysis and Benchmarking

As there is an existing Code of Conduct and the proposal was to create a revised version the logical next step was to analyse the contents of the existing Code and benchmark it against other Codes to identify both the positive and negative attributes of the existing document to inform the development of a new one. Content analysis is a flexible method used in the humanities to analysis a variety of texts, documents or communications. Holsti (1969) defines content analysis as;

...any technique for making inferences by objectively and systematically identifying specified characteristics of messages(Holsti1969, p.3).

More recently Neuendorf (2002) offers a more detailed definition of content analysis;

Content analysis is a summarising, quantitative analysis of messages that relies on the scientific method (including attention to objectivity, inter-subjectivity, a priori design, reliability, validity, generalisability, replicability, and hypothesis testing) and is not limited as to the types of variables that may be measured or the context in which the messages are created or presented. (Neuendorf2002, p.10).

The content analysis applied to the existing Code of Conduct used a combination of qualitative and semi-quantitative approaches. Frequencies of phrases in relation to pre-defined categories were measured. Overlaps and repetitions were also identified to evaluate the effectiveness of the Code as a coherent document. Comparison with existing Codes from other professional bodies was also undertaken using themes adapted from a benchmarking matrix based on work of the Professional Association Research Network (PARN) (Friedman *et al* 2005). Additional comparisons on the proposed Code of Conduct were also made with the CEPLIS and Nolan Committee principles (CEPLIS 2007 and Nolan 1996)

3.4.3 Consultation and Committee Work

There was engagement and consultation with the IOSH PC members, IOSH Council members and the Ethical Practice Manager (EPM) throughout the project. My role as

leader of the project, whilst also being member of the PC, facilitated a frequent two-way communication process during meetings, email correspondence and telephone conversations. Some of this data was captured in minutes and meeting notes, with other less formal discourse reflected on in the learning diary with excerpts provided to underpin seemingly intuitive developments.

3.4.4 Mind Maps

Themes emerging from consultation were ordered, synthesised and contextualised using mind maps and tables, the most relevant of which are included in the project write-up. Mind maps are a form of concept map as described by Novak (1990) and attributed to Buzan (1993) as a way of organising information on key concepts and demonstrating relationships between them. The merits of using mind maps, as a tool for eliciting and representing knowledge, are discussed in the work of Meier (2007). Mind maps were used as a way of visually summarising the large amounts of information processed during the project. They became particularly useful for comparing different sets of information such as category heading of the existing Code against the new Code when presenting back to the Committee and gaining final approval from the IOSH Council. Presenting information in this way makes it easier and quicker for the audience to interpret and make informed decisions on their contents.

3.4.5 Interviews

The strategy for the interviews is non-probability or purpose sampling where the sample group is not random but purposively chosen (Riley et al 2000). The selection of participants involved a range of practitioners invited from various industry sectors with a representative sample in terms of age, gender and membership level.

The aim of the interviews was to allow practitioners to think aloud their practice in an attempt to capture their tacit knowledge on professional ethics. The semi-structured interviews were presented using Kvale's (1996, p.88) seven stages of interview investigation:

1. Thematising: Formulate the purpose of the investigation and describe the concept of the topic to be investigated before the interviews start.
2. Designing: Plan the design of the study, taking into consideration all seven stages, before the interview starts.
3. Interviewing: Conduct the interviews based on an interview guide and with a reflective approach to the knowledge sought
4. Transcribing: Prepare the interview material for analysis, which commonly includes a transcription from oral speech to written text.
5. Analysing: Decide, on the basis of the purpose and topic of the investigation and on the nature of the interview material, which methods of analysis are appropriate.
6. Verifying: Ascertain the generalisability, reliability and validity of the interview findings. Reliability refers to how consistent the results are, and validity means whether an interview study investigates what is intended to be investigated.
7. Reporting: Communicate the findings of the study and the methods applied in a form that lives up to scientific criteria, takes the ethical aspects of the investigation into consideration and that results in an readable product.

Interviews were digitally recorded, transcribed and coded with the assistance of software designed for this purpose; Hyper-research an Apple computer based qualitative research programme. An heuristic approach to coding was used with code words used as flags or signposts that points to interesting findings in the data (Seidel and Kelle 1995).

A pilot was carried out to refine the semi-structure interview approach. As Baker (1994, p182) describes, a pilot study can be the pre-testing or 'trying out' of a particular research approach. The pilot study is an essential part of any study as De Vaus (1993) states;

...do not take the risk. Pilot test first(De Vaus1993, p.54).

The four objectives for the pilot were:

1. Establish the suitability of the questions used during the semi-structured interviews.
2. Identify the time frame needed for the interviews and the number of subjects.
3. Practise the application of interview techniques.
4. Make adjustments to the semi-structured interview design before proceeding.

In conducting the interviews an exploration of practitioners' experience was attempted examining what Patton (1987) describes as:

1. Behaviours or experience
2. Opinion or belief
3. Feelings
4. Knowledge
5. Sensory
6. Background details or demographics

To avoid directing the interviews as far as possible with my own thoughts and opinions whilst also maintaining some momentum the Whyte (1982) directiveness scale as described in Cohen et al (2001, p280) was used during the interviews. This can be summarised as:

1. Making encouraging noises
2. Reflecting on remarks made
3. Probing on the last remark made
4. Probing an idea preceding the last remark made
5. Probing an idea expressed earlier in the interview
6. Introducing a new topic

With 1 being the least and 6 being the most directive on the Whyte scale.

Field and Morse (1985, p.65-73) provide some clear advice for the qualitative interviewer that was used as a verbal briefing note to the interviewees to reinforce what the interviewer would not attempt to do, these have been summarised below:

1. Do not bias the interview
2. Do not council the interviewee
3. Do not teach
4. Do not present one's own perspective on the issue
5. Try not to jump from one subject to another

These 5 points were used not only for my information but also communicated to the interviewees during the preliminary introduction to establish the ground rules.

Themes explored during the interviews emerged from a combination of underpinning literature, pilot study and suggestions from the Professional Committee. The core themes are listed below:

1. Understanding of ethics, codes of conduct, professional behaviours
2. Experience of the Code or breaches of the Code in practice
3. Examples of ethical dilemmas in practice (not necessarily amounting to a breach of the Code)
4. Support mechanisms and guidance available for practitioners
5. Ethical education
6. Drivers for health and safety e.g. moral, legal and economic and their priorities
7. Discussion on penalties
8. Discussion on criminal activity seen as incompatible with the profession
9. Methods of dissemination for the Code
10. Other impacts on the profession e.g. negative media, Lord Young's review

The range and nature of the 15 interview participants is described and discussed in Chapter 6, Stage 3.

3.4.6 Analysis of Cases

Historical cases of allegations of misconduct and disciplinary action provided a useful source of data. Data was available in the form of minutes, case notes and letters. The content of these was analysed, refined and ordered into tables of data to allow a degree of semi-quantitative as well a qualitative analysis to be undertaken. The

cases provided a useful history of the type and number of allegations of misconduct received by IOSH over a relative time period.

3.4.7 Critical Reflection

A danger of insider research is that issues of bias may arise. One way to examine this is the use of epistemic reflexivity (Coghlan and Brannick, 2005). Through critical reflection I would observe my behaviour within the research setting as well as identifying insights as they emerged during the process that may impact on future stages. These insights may emerge from data gathering and analysis activities as well as personal thoughts and epiphanies. There is also the opportunity to reflect on the leadership process, followership insights and organisational change dynamics as they emerged during the project as well as my personal leadership style.

There are many reflective models that have been put forward, most of which appear to have been developed predominantly for the nursing profession (Gibbs 1998, Stephenson 1993, Johns 1995 and Palmer *et al* 1994). Atkins and Murphy (1993) propose a simple model with three distinct stages that act as reflective prompts;

1. Awareness of uncomfortable feelings and thoughts
2. Critical analysis of feelings and knowledge
3. New perspective

Drew and Bingham (2001) and Kolb (1984) provide useful definitions of reflective practice;

... looking back on an experience and making sense of it to identify what to do in the future(Drew and Bingham 2001, p221).

...do something, think about it, what you did, come to conclusions about what you did and plan to try again. (Kolb 1984, p38).

The critical reflective process is essential in making links between theory and practice and identifying gaps in theory. I anticipate a degree of dissonance between what Argyris and Schön(1974) described as espoused theory and theory in practise

thus creating a significant theory/practise gap. Schön (1991) describes knowledge in practice settings as either being 'technical rationality' or 'tacit knowledge' with technical rationality being associated with empirical science, whilst tacit knowledge is describe in terms of, what Polanyi (1967) describes, as being a way of knowing and understanding that cannot be articulated, but which guides practise and is linked to experiences and expertise. In other words, in the absence of any formal training, intuition guides us as to the best course of action to take, and the more success we have in terms of favourable results, the more confident we became in practice. As Coghlan and Brannick (2005) note, as the researcher in action research, you are by the very nature of the inquiry an instrument in the generation of data. McNiff and Whitehead (2002) also argue that in the interpretive paradigm, the practitioner is also a real life participant in the research with their views being valid.

The process of critical reflection to capture my views was aided by keeping a learning diary. As Cottrell (2001) acknowledges;

The art of writing things down helps you to clarify your thoughts and emotions, to work out strategies, and to focus on your development and progress...(Cottrell, 2001 p67)

Not everything in the diary was directly relevant to the project. Selected excerpts from the diary were included in the critical reflection write up at the end of each stage. These were used to capture the insider researcher and leadership issues that arose during the progress of the project, as well as to plan the next steps for progress to the next stage. Moon (2004, p.82) describes 'common sense reflection' where notable events are recorded and reflected on. Thoughts and feelings are then described and evaluated to promote learning.

3.5 Action Research Stages

The next step was to map the techniques chosen to an action research cycle that best represented the research and development undertaken. Each stage has been described using the standard action research elements as described by McNiff and Whitehead (2002) of plan, act, observe and reflect. These have been represented in

a model that closely resembles O’Leary’s model of action research shown in Figure 3.2 below;

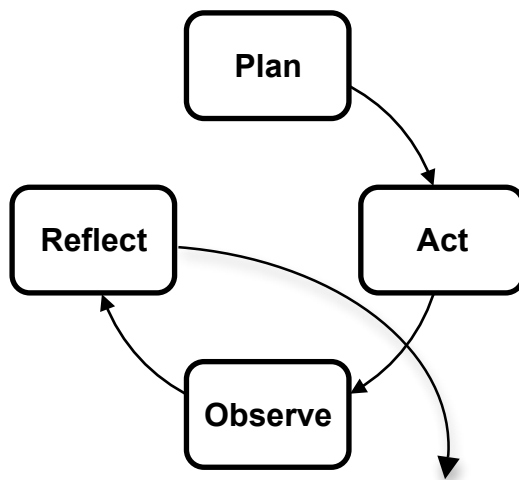


Figure 3.2: Elements of the Action Research Cycle (O’Leary 2005, p192)

Each cycle was emergent and developed during the project to represent distinct stages of the project. Cycles have been referred to as stages, a preferred term in project management and therefore more easily understood by the Committee members. The four stages as identified within this study are:

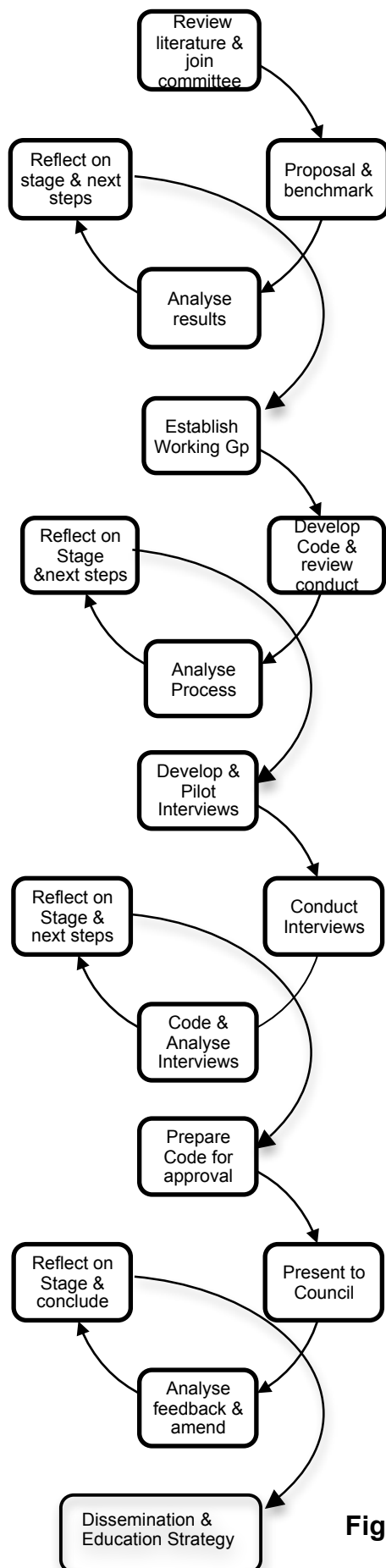
Stage 1 – Initial Proposal and Benchmarking

Stage 2 – Developing the New Code of Conduct

Stage 3 – Semi-structured Interviews on Practitioners

Stage 4 – IOSH Council Consultation and Approval

Although the stages are described as distinct, in practice stages overlapped and in the case of Stage 3, the semi-structured interviews, were conducted simultaneously with Stage 2 and Stage 4. The detail of each stage and the methods employed are described under the relevant stage headings. As Waterman et al (2001) indicate when doing action research it is likely to be a number of small-scale evaluations within a larger project and not a single large-scale evaluation.



Stage 1 – Initial Proposal & Benchmarking

The information from the benchmarking process used to create change by revealing in detail the deficiencies in the existing Code to underpin the justification for the development of a new Code of Conduct, guidance and disciplinary procedure made in the original proposal.

Stage 2 – Developing the New Code of Conduct

The development of the draft Code of Conduct, guidance and disciplinary procedure and consultation with Committee members to evoke change by challenging members pre-conceived perceptions on the existing Code, cases of misconduct and the proposed format of the new Code. Opportunities will be taken to analyse and reflect on past cases to inform the development through consultation with members. Create empowerment for change through the adoption of a transformational and authentic leadership style to encourage engagement and ownership of the development by all members of the Committee.

Stage 3 – Semi-Structure Interviews on Practitioners

By interviewing practitioners from outside the Committee it was possible to gain insight into ethics and conduct as it relates to professional practice whilst also establishing an understanding of practitioners existing knowledge of the area. This will be used to inform the development of guidance and case studies as well as the future dissemination of the Code.

Stage 4 – IOSH Council Consultation and Approval

Involving the IOSH Council in the final stages of the development in preparation for approval is an important stage in the development strategy. Many members of Council would not have had the experience of hearing cases of allegations of misconduct and therefore may not have fully understood the application of the existing Code. The use of case study exercise at the initial presentation to Council will help created ownership of the proposed Code leading to more meaningful feedback prior to approval.

Figure 3.3: Action Research Stages

3.6 Data Sources

As with the majority of projects set in the real world the data for the project came in various forms some anticipated others emergent. The main sources are listed below:

- Literature related to ethics, professional ethics and codes of conduct.
- Guidance published by the Professional Associations Research Network (PARN).
- Data derived from the benchmarking exercise on the existing Code, guidance and disciplinary procedure.
- Professional Codes of Conduct and Guidance documents available in the public domain.
- Minutes from IOSH Committee meetings.
- Analysis of allegations of misconduct received by IOSH.
- Consultation and correspondence from Committee meetings and email.
- Transcriptions from semi-structured interviews.
- Reflection and excerpts from the research diary.

Excerpts from IOSH Committee minutes are provided to indicate the timeline of events, completion of successful stages and details of strategies as agreed at the time. Specific details of the research activities are discussed under each stage heading.

3.7 Summary of Research Participants and Stakeholders

The participants and contributors to the study are drawn from the following groups

1. 9 Members of the IOSH Professional Committee (renamed Professional Ethics Committee) and subsequent working party¹².
2. 2 IOSH employed staff directly involved in the project.
3. 15 Health and Safety Practitioners invited for interviews.
4. 44 members of the IOSH Council.
5. 12 members of the IOSH Board of Trustees including 3 independents (not members of IOSH).

¹² The term “working party” initially referred to members of the Professional Committee who were involved in the development of the new Code. Eventually all members of the Committee became part of the working party. As such the working party is occasionally referred to as the Committee or vice versa in this document and documents created by IOSH such as minutes and reports.

A total of 82 people were involved in the project to a greater or lesser extent. The 9 members of the PC(now known as the Professional Ethics Committee) formed the working party for the project. The 44 members of Council were invited to consult and comment on the draft version of the Code and approve it for submission to the Board of Trustees (BoT). The 12 members of the BoT having approved the project at the outset have final approval of the document following the IOSH Council stage. The 15 practitioners will not be involved in consulting on the main document, rather they will be given the opportunity to share their own experiences related to the existing Code, conduct and ethical issues that have arisen during their practice. This will be used to contribute to the guidance, dissemination strategy for the new Code and allow for the consideration of practice related issues not necessarily revealed during the consultation process. The 2 IOSH staff members (one being the Director of the Professional Affairs Directorate and the other being the recently appointed during Stage 2 of the project) provided the authority, administrative, technical and resource support to the project from the outset.

3.7.1 Professional Ethics Committee (Formally the Professional Committee)

The Professional Ethics Committee (PEC) has the remit to uphold the IOSH Code of Conduct. The PEC is also responsible for recommending changes to the Code as and when required.

The PEC reports directly to the BoT and is required to produce a report to the IOSH Council and seek Council's opinion about issues relating to ethical considerations in practice. In relation to the IOSH Code, the PEC must review and maintain the Code ensuring it reflects high standards and is comparable with best practice in other professional bodies. It should recommend any necessary changes for approval by the BoT, after appropriate consultation with Council. It considers all allegations of misconduct referred to it by the Chief Executive under the disciplinary procedure, and refers allegations to a Disciplinary Committee when appropriate. Its remit includes developing guidance relating to ethical considerations and dilemmas that may be faced by practitioners in the course of their practice. It also acts as the Appeals Panel for Membership Application and Professional Development processes.

The PEC consists of up to 8 Chartered members, appointed by BoT, advised by the

Nominations Committee and the appointed Chair. Co-opted members may be appointed for specified periods to carry out specific tasks.

3.7.2 IOSH Council

The Council is the representative body of the Institution and is the ultimate champion and conscience of the Institution's integrity and ethics. It is made up of elected members that provide advice and debate on strategic, professional and policy issues and represent the views of members to the Board of Trustees (IOSH 2010b).

The key responsibilities of Council are to:

- Elect the presidential team
- Approve appointments of the Nominations Committee, Risk Management and Audit Committee, BoT and Chairmen positions of the Standing Committee
- Review the performance of the BoT
- Propose necessary changes to the Charter and Byelaws, for approval by members and the Privy Council
- Propose resolutions to be considered at General Meetings
- Consider and approve Regulations made by the BoT

3.7.3 IOSH Board of Trustees (BoT)

The BoT is appointed by the Council and is responsible for managing IOSH affairs. The Board has legal accountability for all IOSH activities and results. The Board consists of eight members, three independents (non-IOSH members) and the Chief Executive, and meets six times a year (IOSH 2010).

The BoT will ultimately be responsible for signing off on the Code of Conduct once the Council has approved it. The BoT has had impact on the review by agreeing the PEC's work plan which included the review of the Code, agreeing the appointment of the EPM and reorganising the Committee structure including changing the terms of reference and name from the Professional Committee to the Professional Ethics Committee. The BoT also has 3 independent members who are not members of IOSH and represent the wider public interest.

3.7.5 Health and Safety Practitioner Interview Participants

In selecting the participants a purposeful approach was taken with the intention of obtaining a reasonable representation across industry, age, professional status and gender. The representation of the participants is shown under headings below:

Industry Representation

1. Consultancy
2. Construction
3. Education
4. Local Authority
5. Retail
6. NHS
7. Transport
8. Occupational Hygiene
9. Ergonomics
10. Property Management
11. Financial

Membership Representation

1. Chartered IOSH – 9
2. Graduate Member IOSH - 0
3. Technician IOSH or equivalent - 4
4. Chartered CIEH - 1
5. Member IIRSM - 1
6. Member of the Human Factors & Ergonomics Society - 1
7. Member of BOHS - 1
8. Other - 2

Gender

1. Male - 10
2. Female - 5

Age Range

1. 20-29 = 1
2. 30-39 = 6

3. 40-49 = 6
4. 50-59 = 1
5. 60+ = 1

Participants have been referred to anonymously, being provided with arbitrary names when quoted

3.8 Research Activities by Actions Research Stage

A summary of the core research activity undertaken in each of the action research stages is given below. Each stage included a critical reflection to recognise the insider researcher insights and position as leader of this organisation change process.

3.8.1 Stage 1 – Initial Proposal & Benchmarking

The initial stage involved the opening proposal to the IOSH Committee for the researcher to lead the review and development of the new Code of Conduct, guidance and disciplinary procedure. Based on the positive outcome of the initial proposal the next step was to conduct a full benchmarking exercise to underpin the justification for the changes for the next stage. A form of content analysis preceded the benchmarking exercise; this provided qualitative information on the validity of the existing Code (Krippendorff, 2004). Stage 1 was organised around the following activities;

1. Qualitative appraisal of the existing IOSH Code of Conduct
2. Semi quantitative content analysis of the existing IOSH Code against the following criteria;
 - a. Frequency of language used in the obligations
 - b. Frequency of obligations in each Code point
 - c. Guidance provided
 - d. Frequency of overlaps in obligations

3. Benchmarking the existing IOSH Code against a selected range of other professional Codes and criteria from PARN, CEPLIS and Nolan Committee.

3.8.2 Stage 2 Developing the New Code of Conduct

At this stage the decision to develop a revised Code and guidance had been made by the Committee based on the outcomes of Stage 1. As leader of the development my responsibility was to set up a working party and progress the development through regular consultation with the Committee members and collaborative working with the newly appointed EPM. A critical review of previous allegations of misconduct and disciplinary cases was also undertaken as well as a review of how the Committees functioned when making decisions. Mapping exercises were used to capture themes as they emerged, representing the proposed structure of the Code as well as mapping the structure against the previous Code and criteria used in Stage 1 for assurance.

3.8.3 Stage 3 – Semi-structured Interviews on Practitioners

This stage, although represented as a distinct stage, in reality overlapped Stages 2 and 4 being conducted in parallel. Data from the interviews was used to inform the development of guidance as well as strategy for the;

1. Dissemination of the Code and guidance
2. Education
3. CPD
4. Support for members on ethics

The interviews also provided a useful insight into the nuances of practice in relation to ethics.

3.8.4 Stage 4 – Presentation of new Code of Conduct to the IOSH Council for Approval

The final stage represented the Committee's commitment to presenting its work in the form of a new Code, guidance and disciplinary procedure to the Council together

with a strategy for its dissemination. In finalising the Code, the consultation with Committee members involved mainly the guidance section of the Code together with the development of six paradigm cases to be used as a way of engaging Council members in the new Code to improve feedback. A combination of data sources were available including minutes, email correspondence, research diary notes and transcription from the Council meeting

3.9 Research Bias

In the qualitative field of enquiry in particular, Herr and Anderson (2005) suggest that words such as 'trustworthiness' and 'credibility' are more appropriate when describing features of the research that make it believable to others. This is subtly different to the positivist paradigm where words such as 'validity' and 'reliability' are used to assess the quality of research. Rigour could be seen as a feature of both paradigms but being achieved in alternative ways due to the differences in the source data.

In action research the goal is to demonstrate change and provide evidence of improvement (McNiff and Whitehead, 2002). As an action researcher positioned in the project as an agent of change there is a risk that my tacit knowledge as a practitioner will bias the research. This could, as Herr and Anderson (2005), observe challenge the validity of such research. It is therefore important to acknowledge such bias, as Robson (2002) recognises this is inevitable in this type of real world enquiry. Coghlan and Brannick (2005) recognise that where a flexible qualitative research approach is taken, bias is likely and can be monitored by the researcher by adopting epistemic reflexivity. To achieve this, a learning log was kept throughout the project and excerpts included in the write-up as part of a critical reflection on each stage and outcomes. This encouraged regular reflection on the activities, feelings and behaviours of participants including myself. It also allowed the early identification of insights leading to revelations that have a bearing on the project. By taking this approach it will be possible not only to recognise improvements but also to consider the underpinning theory that may help to explain the change as it occurs. It will also be useful in recognising where the researcher and participants gain new ways of thinking as a result of the process.

Symon and Cassell (1998, p7) refer to Lincoln and Guba (1989) authenticity criteria as a way of ensuring the trustworthiness of research. The criteria cover 4 paradigm areas, resonance, rhetoric, empowerment and applicability that can be used to assess a project against. The criteria are presented below together with a summary of how the project addresses each criteria.

1. **Resonance** - The underlying meaning of the project is explicitly stated in the research question and subsequent emerging aim and project outcomes. This has captured a realised, emergent and immediate need of the profession for a review of the existing approach to regulating the profession, a new Code of Conduct and further guidance. Having defined the epistemological position of the project the methodology has been designed to meet the research needs whilst facilitating the development at the same time.
2. **Rhetoric** - Propositions are articulated logically and underpinned by evidence, literature and reflections, or a combination of all three to substantiate any argument presented. A structured and robust project design facilitates a logical write up to ensure concepts are clearly presented.
3. **Empowerment** - Participants in the study will be empowered through an action learning process as the project progresses towards the final project. As an iterative process this learning is two way resulting in empowerment for both the researcher and participants. Longer-term empowerment will occur by the beneficiaries of the project outcome improving their ethical practice.
4. **Applicability** - The research is explicitly applicable to the area being studied and the successful achievement of the aim and project outcomes has direct implications on the profession and the approach to regulating members. The project lives within the real world environment it is studying and will have real-time impact on the organisation as it progresses.

3.10 Ethical Approval

Ethical approval for the project was provided by the School of Health and Social Sciences, health ethics sub-committee on the 1st November 2007 and by IOSH on the 13th May 2008. Copies of the approval letters are attached at appendix B. General consent was received from IOSH through the IOSH Professional Committee and recorded in the minutes. A proposal was made to the Committee to lead the review of the existing Code with a view to creating a new version as part of the Committee's usual terms of reference. This was proposed on the 13th May 2008 and recorded in the minutes with an extract attached at appendix C. No reference has been made at any time to individual members participating in Committees or in any quotes taken from minutes, notes or learning diaries.

Participants in the semi-structured interviews were outside the IOSH organisational structure and were therefore provided with a participant's information sheet and consent forms. Consent forms were signed by those agreeing to participate and retained by the researcher. All recordings and transcripts were kept secure. Participants in the interviews were anonymous to all but the researcher. All other participants were members of established Committees and, although the identities are known, contributions made by individual members were kept anonymous within the context of the study.

3.11 Conclusion

There were a number of methodological challenges present by this real world project. The first challenge was one of divergence between the research and the real world development. It was essential that for the project to be successful as both an academic learning experience (as a DProf student) and to meet the aim for the organisation (that the research be embedded as much as possible and not overly abstract). To reduce the risk of divergence the methods used were integrated with the existing Committee structures and consultation mechanisms so as not to unduly impinge on members' time, many of which are volunteers. Time itself was also a challenge, once the Committee had agreed that the work should be undertaken there would be little tolerance for a protracted research process with no visible results. A benefit of the action research process was that progress could be evidenced at each

Committee meeting, the meetings themselves forming part of the research and further developments could progress with a life of their own without the unilateral control of the researcher. The conflict between owning the project and yet creating a leadership process that was inclusive, transformational and not overly controlling was also a challenge. The need to let go of certain aspects of the project to others to enable its success for the organisation whilst achieving my personal aim of a successful DProf project was a source of enormous personal anxiety throughout the process. To counter this anxiety, critical reflection on each stage with reference to insights and epiphanies from the personal learning diary was found to be extremely useful.

The scale of the project is large involving an accumulation of a significant amount of evidence in the form of consultation notes, email correspondence, numerous drafts of final products, learning diary, transcriptions of interviews, misconduct cases and minutes from meetings. It has therefore been necessary and appropriate to be selective in providing evidence in the form of excerpts, examples and summaries to provide a meaningful account of the research development process that has led to the final product. The information is presented using the action research framework under the 4 key headings as discussed in the methodology.

- Stage 1 – Initial Proposal and Benchmarking
- Stage 2 – Developing the New Code of Conduct, guidance and disciplinary procedure
- Stage 3 – Semi-structured interviews of practitioners
- Stage 4 – Final developments and presentations to the IOSH Council for approval

Evidence from each stage is presented and critically discussed with actions for the following stage developed. A critically reflective account is also provided at the end of each stage that draws on the learning diary kept during the research process. Each stage is presented using the action research headings:

- Plan
- Action

- Observation
- Reflections

This provides a consistent structure and ensures that all relevant issues are included from the enormous amount of data gathered during the life cycle of the project.

CHAPTER FOUR – STAGE 1: THE INITIAL PROPOSAL, EVALUATION AND BENCHMARKING

4.1 Introduction

In this chapter I describe the process of gaining support from IOSH for the project to review and evaluate the existing IOSH Code, and develop a new IOSH Code with guidance. A copy of the existing IOSH Code and guidance is attached as appendix D. The process of evaluating the existing IOSH Code including a content analysis, comparison and benchmarking against other Codes of Conduct. The uses of established criteria from PARN, CEPLIS and the Noland Committee that relate to Codes of Conduct are also critically discussed.

4.2 Plan

4.2.1 Identifying the Drivers for Change

The plan for this stage involved firstly identifying the initiator for change, including the socio-political drivers, which have been outlined and discussed in the introduction. These included changes to the professional membership, namely:

1. The significant increase in membership of the profession.
2. A raising of the academic standards through an increase of undergraduate and postgraduate degrees
3. The awarding of Chartered status for members achieving appropriate academic awards and holding suitable and sufficient experience of practice.

There were also changes in societal expectations and perceptions of health and safety. These were driven to some extent by conservative political ideologies that saw regulation, including health and safety, as a burden on businesses rather than a necessary requirement for protection of vulnerable employees or wider society from exploitation. The media played a large role in changing perceptions with the Daily Mail leading the attack on our health and safety culture.

These internal professional and external societal changes occurred whilst the profession's Code of Conduct and guidance have remained unchanged. The

professional health and safety practitioner is playing an ever-increasing role in society at a time when it is also under increasing scrutiny. With the Code of Conduct at the heart of what defines our professionalism the question is simply; Is the Code of Conduct still fit for purpose?

The requirement to review and maintain the Code is contained in the Professional Committees (PC) terms of reference;

Review and maintain the Code ensuring it reflects high standards and is comparable with best practice in other professional bodies. Recommend any necessary changes for approval by BoT, after appropriate consultation with Council. IOSH PC Terms of Reference (2008)

4.2.2 Joining the Professional Committee

Becoming a member of the PC therefore became a critical dependency for the success of the project. A successful appointment to the PC was achieved in December 2007 following a rigorous selection process.

Once appointed a review of the literature on ethics, professions and codes of conduct was undertaken to provide the theoretical underpinning for the proposal to review the Code and develop a new code and guidance that was fit for purpose. A proposal to the PEC was developed to justify the critical review of the existing IOSH Code, benchmarking against other Codes or criteria and the following action plan for the development of a new IOSH Code, guidance and, if necessary, disciplinary procedure.

4.3 Action

4.3.1 Making the Proposal

Joining the PEC and proposing the review of the Code was the opening strategy for the project. After the successful appointment to the Committee the strategy was to wait until the second meeting to make the proposal. The rationale for this was to avoid an early defeat due to being a 'new person' without any proven track record to warrant such trust on a project. By building in this delay I had the opportunity to assess the culture of the PC and in doing so was able to intuitively grasp the best

method of making the proposal to secure its success. The initial proposal was therefore made three months later at the second meeting and recorded in the minutes, an extract of which is shown below:

It was now several years since the Code of Conduct had been reviewed and revised and it was necessary for the PEC to look at this issue. SL volunteered to lead this review. The Chairman asked the PC members to look at the Code of Conduct and to feedback to Shaun any comments they may have relating to this. The PC sub-Committees were also asked to feedback in this process either as groups or as individuals. This would be included into the developing PC work-plan, which would be discussed at the next PC meeting.(extract from PC minutes dated 21st February 2008).

4.3.2 Scope of Works

The Task was then added to the 2008 PC work-plan as summarised below:

1. To develop a proposal to revise the IOSH Code of Conduct, guidance and disciplinary procedure
2. Draft a revised version of the IOSH Code of Conduct for consultation
3. Revise the Code of Conduct

The tasks were linked to the IOSH corporate strategy specifying the following as particularly relevant to the work:

1. Leading OSH thought
2. Raising the IOSH profile
3. Developing people

The task was given an ambitious completion target of 31st March 2009 although reviews of completion dates would be undertaken as the project progressed.

4.3.3 Benchmarking

As well as the Committee members reviewing the Code and feeding back their comments a detailed review and benchmarking analysis of the Code was conducted at three levels;

1. Critical content analysis of the existing IOSH Code.
2. Comparison with other codes of conduct from selected professions.
3. Evaluation against existing criteria for codes of conduct such as the PARN matrix, CEPLIS and Noland Committee principles.

The first level of analysis involved the examination of the IOSH Code's content to identify gaps, areas of ambiguity and shortfalls. Subsequent analysis was undertaken against best practice and the published literature. More detailed analysis was then undertaken in terms of language used, number and type of obligations, guidance and ethical robustness. Input was received from Committee members and was incorporated into the review finding.

The second level of analysis compared the IOSH Code against those of a number of other professional bodies. In determining which professional bodies should be used a purposeful sampling approach was adopted. In the first instance professions that are similar in terms of their professional activity were selected. This included professionals whose work involved some aspect of workplace risk or personnel management where health and safety issues form part of the professional function. This resulted in the following allied professional bodies being selected;

1. Chartered Institute of Environmental Health (CIEH)
2. British Occupational Hygiene Society (BOHS)
3. International Institute of Risk and Safety Management (IIRSM)
4. Institute of Ergonomics and Human Factors (IEHF)
5. Chartered Institute of Personnel and Development (CIPD)

In addition to the five above a number of other professional bodies were selected based on the criteria of being long established professions rather than emerging professions with some bearing on health and safety risks. These included;

1. Royal Institute of Chartered Surveyors (RICS)
2. Royal Institute of British Architects (RIBA)

Other professions were included but in a less rigorous fashion. For example during the project I was invited to be a lay member of the disciplinary Committee for the Chartered Institute of Securities and Investment (CISI), a financial services authority (FSA) regulated profession. This involved training on their Code of Conduct and disciplinary procedures, providing useful insights that have influenced the project. This allowed the identification of areas of good and poor practice to inform the development of the IOSH Code, and these have been included in the reflections for each stage as appropriate.

4.4 Observations

4.4.1 Introduction

The existing IOSH Code is in the public domain being easily available on the IOSH website, although not on the front page. It is undated and consists of a contents page indicating the contents as, Code of Conduct, additional guidance and disciplinary procedures. There then follows a page that is not titled as the foreword but appears to be one. The foreword provides a brief introduction with the expectation for members to ensure high levels of technical competence and professional conduct, stipulating the requirement to comply with the IOSH Code under byelaw 8. The foreword then goes on to explain how allegations of misconduct are handled under the disciplinary procedures. There is also an explanation as to the status of additional guidance that appears to have quasi- status. The foreword arguably gives the impression that the purpose of the Code is punitive rather than being goal seeking.

4.4.2 The Existing IOSH Code

The Code of Conduct is then presented as 19 Code points with no titles for each point, in columns with guidance presented to the right of each Code point. Not all Code points have guidance. Additional guidance is then provided separately from the 19 Code points under the headings; consultants, employers, researchers, providers of education and training, information management, data protection and IT, legal

requirements. This guidance is very operationally focused for example under consultant it states:

Not work for more than one client simultaneously on the same case without the express consent of all clients

IOSH Code of Conduct (undated, p8)

This would fall under 'conflicts of interest' that is included in Code point 12, however no explicit link is made between the Code point, which has guidance and this additional guidance for consultants.

Another example demonstrates how the additional guidance may have departed from the Code of Conduct into more explicit detail that some may consider obvious common sense, for example under research it states:

...where your work affects employees or others, ensure safeguards exist against physical, mental, emotional and social harm to subjects

IOSH Code of Conduct (undated, p8)

This requirement, it could be argued, is not unique to research and could be said to be applicable to every work situation and every employee. The value of explicitly raising this in a Code of Conduct is questionable; particularly when you consider that to cover every single situation that may arise in professional practice you would need a significant amount of guidance. It seems therefore futile to try and achieve this. A more sensible approach would be to capture guiding principles under which more detail can be provided with guidance that, whilst not attempting to cover every possible example, does seek to capture the more plausible ones to illustrate how the IOSH Code may apply in practice.

4.3.4 Initial Feedback from PEC Members

In the initial discussions with the PEC on the existing IOSH Code the Committee questioned the value of additional guidance and indicated that perhaps this should be separate from the Code making clear reference to it when applicable. This would

reduce the risk of repeating Code points but potentially create a conflicting and ambiguous document. It would also allow for specific guidance on an operational area to contain more useful detail in addition to Conduct issues making it more specific to practitioners operating in those fields. This would especially be the case for consultants and educators who have very specific roles that may require further guidance beyond the limited amount included here. For example there are 5 bullet points amounting to 74 words covering education and training providers, which does not contain any guidance on making reasonable adjustments for those with disabilities who may wish to participate.

Early feedback from PC Committee members was that the existing Code was not entirely memorable; recalling 19 Code points that were not categorised in any way was a difficult task. As this was the feeling amongst the Committee who had responsibility for reviewing allegations of misconduct against the IOSH Code then it would be logical to assume that the vast majority of the membership would have the same difficulty. It was also recognised at the time by the PC that the IOSH Code and professional ethics in general had not been included in any previous educational syllabus for occupational health and safety or indeed interview criteria for Chartered membership, making it a rather silent document for the health and safety professional.

4.3.5 Initial Qualitative Appraisal of the Code

Following the initial discussions on the IOSH Code a further, more detailed, qualitative appraisal of the IOSH Code was undertaken with contributions from members of the PEC Committee recorded in note form. These have been recorded in with a synthesis provided in the seven points below:

1. Too many Code points to recall
2. Does not appear logical
3. Some Code points have multiple obligations
4. Language used varies
5. Appears to be some repetition and overlaps
6. Guidance missing on some points

7. Not user friendly, no headings and too long

It became apparent the IOSH Code is not exempt from the issues of plagiarism. When considering how many professional codes of conduct are published and online this is hardly surprising. A simple Google search for each Code point revealed that some of language used had been taken from other code of conduct documents. In particular Code point 9:

“Members shall not recklessly or maliciously injure, or attempt to injure, whether directly or indirectly, the professional reputation, prospects or business of another.” IOSH Code of Conduct (Undated, p.4)

Appears almost verbatim in several other Code documents for example, The Institute of Engineers, The Institute of Mathematics and its Applications, the Institute of Explosive Engineers, the Safety and Reliability Society and the Chartered Institute of Payroll Professionals. It is possible that when the IOSH Code was first developed, members involved were also members of other engineering or safety organisations and borrowed from their other professional Codes of Conduct. It is also possible that other professions borrowed from IOSH. It is impossible to know for sure as the records on the previous development of the existing Code are not available for scrutiny.

4.3.6 Content Analysis of the Code

Following the initial appraisal of the Code a more detailed content analysis and benchmarking exercise was undertaken. To make sense of the Code for the purposes of benchmarking it was necessary to apply thematic categories to Code points. An iterative reductionist approach was used to achieve this. This involved creating statements and then refining them to establish a best fit for each Code point without leaving out the essential meaning. This made future analysis of the existing IOSH Code easier to follow and there was less likelihood of mistakes. Using the thematic categories the content of each Codepoint was critically analysed to establish its relative merits and failures. It is clear, following the initial appraisal, that many of the Code points have multiple obligations, for example the first Code point

has three obligations; loyalty, high standards and independence obligations. It became necessary therefore to capture these in the thematic heading applied.

Table 4.1: Thematic Categories Applied to the Existing IOSH Code

Code point	Thematic categories applied	Code point	Thematic categories applied
1	Loyalty, highest standards & Independence	11	Honesty (use of membership/designations/qualifications)
2	Legal (practice)	12	Conflict of interest
3	Honest, objective & reliable	13	Confidentiality
4	Competence (Continuing Professional Development)	14	Making H&S information available
5	Competence (limits of)	15	Data Protection
6	Competence (supervision)	16	Financial propriety & PII
7	Advice not followed	17	Unfair discrimination
8	Reputation of others & cooperate with IOSH	18	Act within the Law
9	Respecting professional reputation of others	19	Comply with IOSH Charter, Byelaws and Regulations
10	Inappropriate behaviour		

The first stage of content analysis produced numerical data against the criteria of guidance, in the form of number of obligations and frequency of overlaps based on the initial observations of the PC. In determining the suitability of guidance it was clearly necessary to identify missing guidance and prioritise this for development at the next stage. The number of separate obligations and frequency of overlaps is based on the critical analysis of the content of the IOSH Code. It could be argued that, in some cases, where multiple obligations have been identified, they could equally have been identified as one single obligation. It is not suggested that multiple obligations are avoidable in every case only that where multiple obligations exist they should be reduced to single obligations when possible to aid interpretation. The numerical representation of multiple obligations in the Code provides a useful guide and benchmark for comparison against other codes of conduct or even the new IOSH Code once developed. In the same way overlaps have been assigned numerical values based on the qualitative analysis of the Code. Some overlaps are greater than others, however it was not deemed useful to rate this quantitatively, the principle being that duplications should be avoided and overlaps reduced wherever possible. Completely eliminating overlaps may not be possible in every

case. However, by setting this benchmark it should be possible to demonstrate that in the new IOSH Code, overlaps have been reduced in comparison to the old IOSH Code and therefore improved in that regard. The analysis is summarized in table 6 below:

Table 4.2: Summary of the Initial Analysis of the Existing IOSH Code

Code point	Thematic categories applied	Guidance 1-yes 0-No	Number of obligations	Overlaps (Freq)
1	Loyalty, highest standards & Independence	1	3	5
2	Legal (practice)	1	1	3
3	Honest, objective & reliable	1	3	3
4	Competence (Continuing Professional Development)	1	5	3
5	Competence (limits of)	0	3	2
6	Competence (supervision)	0	5	2
7	Advice not followed	0	1	0
8	Reputation of others & cooperate with IOSH	1	6	3
9	Respecting professional reputation of others	0	2	2
10	Inappropriate behaviour	1	1	2
11	Honesty (use of membership/designations/qualifications)	0	2	2
12	Conflict of interest	1	2	2
13	Confidentiality	1	1	4
14	Making H&S information available	1	1	2
15	Data Protection	0	1	4
16	Financial propriety & PII	1	2	3
17	Unfair discrimination	0	1	5
18	Act within the Law	1	2	4
19	Comply with IOSH Charter, Byelaws and Regulations	1	2	3
	Totals & Comments	12 12/19 (63%)	44 12/19 multiple obligations (63%)	52 (26 reciprocal)

The table clearly shows that only 12 Code points out of 19 (63%) had guidance leaving 7 Code points (37%) with no additional guidance for members. It has already been discussed that guidance in some cases was very limited, for example, in Code point 2 it states;

2. *Members must abide by the legal requirements relating to their practice or operation. IOSH Code of Conduct (undated, p3).*

Is provided with the guidance;

2. *Be aware of the appropriate legal requirements for the territory in which you practice or operate. IOSH Code of Conduct (undated, p3)*

As guidance, this achieves very little in explaining or providing examples of what legal requirements relating to their practice may actually be. It also could be argued that the guidance here is simply a rephrasing of the original Code point but with lower level of compulsion. The development of guidance for the new Code is discussed in Stage 3 and observations on the lack of guidance or the limitations of it were useful in identifying areas for improvement to include in the new Code. Of particular note from the guidance in the existing Code was the lack of relevant real world examples from which the Member could contextualise the Code. The lack of context would, it could be argued, result in Members disconnecting from the Code, seeing it as an abstraction rather than relating to their actual practice, with the result being limited routine engagement with the Code. Under these circumstances the Code would only be referred to in matters of complaint by a complainant, in relation to the subject of an allegation or by those deciding on cases.

In determining the overlaps within the existing Code an overlap matrix shown in appendix E was populated. Overlaps are by definition reciprocal and the matrix provided a useful numerical check to ensure that reciprocal overlaps have been accounted for by providing totals along both rows and columns. A total of 52 actual overlaps amounting to 26 reciprocal overlaps were recorded. Overlaps can result in several Code points being cited in an allegation of misconduct that in turn can lead to problems in identifying a clear breach. It also implies some degree of repetition that can cause confusion for any one interpreting it. The implications of this on the Committee are also negative as they have the task of deciding whether a particular Code has indeed been breached and where a breach is relevant to several Code points this could cause confusion leading to a viable appeal against a sanction awarded.

The number of obligations is high at 44 in comparison to 19 stated Code points. 12 out of the 19 Code points (63%) have 2 or more stated obligations. The implication of this are that when citing a Code point in an allegation of misconduct it may only partially apply. Also, when interpreting the requirements of a Code point, there can be complications where there is more than one obligation, for example Code point 1, cited below has 3 obligations with 3 separate beneficiaries and variations in the level of compulsion cited within the Code point.

Members of the Institution, wherever employed, owe a primary loyalty to the workforce, the community they serve and the environment they affect. Their practice should be performed according to the highest standards and ethical principles, maintaining respect for human dignity. Members shall seek to ensure professional independence in the execution of their functions IOSH Code of Conduct (undated, p3)

In addition to the criteria used above the frequency of obligations by type was also captured. In the qualitative analysis the language used in obligations was considered significant and therefore would need to be considered in the new Code development. Table 7 below shows the various obligations used in the existing Code and frequency of their use.

Table 4.3: Frequency of the Type of Language used in the Obligations under the Existing IOSH Code

Verb or Compound Verb used in obligation	Frequency
Shall	22
Should	1
Must	4
Maybe require to	1
Are required to	1

The modality of language used in Codes is seen as significant by Friedman *et al* (2005) who provides a table of modality based on levels 1-5 shown in table 8 below:

Table 4.4: Modality: level of Compulsion Friedman et al (2005, p.110)

Modality	Descriptor
Level 1 Based level with a time perspective	Under any circumstances; Shall at all times; Shall in all respects; Will strictly; Must always; In no instance
Level 2 Base level	Shall; Must; It is essential that; Will; Duty of care; requires; Basic duty
Level 3 Mid-point between levels 3 and 4	Should; Ought; May; Use best endeavours; Shall; have regard for; Endeavour at all times; Seek at all times
Level 4 Advised to do something rather than compelled, and clearly not in every circumstance. Using professional judgement.	It is preferable; It is advised; Care must be exercised; Strive; Ideally; When time permits; Should seek to; desirable; it is prudent; take reasonable steps; expected; can; do all can; take care; shall endeavour; shall seek
Level 5 Almost a statement of fact – very low level of compulsion	Asked; Requested; Recognises; Agrees

Table 4.5: Frequency of Modality in the Existing Code

Modality	Frequency
1	0
2	18
3	7
4	6
5	0

The most frequently occurring obligation in the existing Code is ‘shall’, identified as a base level obligatory phrase along with ‘must’ and ‘will’, denotes a relatively high level of compulsion. The level of obligation for the new Code would need to be discussed by the Committee, essentially as with legal obligations the lower the modality of the obligation the more difficult it becomes to hold a member accountable for their actions under a specific Code point. Where ‘should’ a quasi-obligatory statement is being used, it could be argued that the obligation is tending towards an advisory position rather than a compulsory one. In some cases ‘shall’ is qualified in a way that reduces the level of obligation, for example in Code point 12 the phrase ‘members shall seek to avoid’ is used which reduces the level of obligation to advisory rather than obligatory and according to the PARN guidance places it at level 4 on the level of compulsion table. It would be the intention to avoid advisory level language in the revised Code and opt for level 2, base modality as a minimum.

PARN provides a unique guide on analysing ethical codes of UK professional bodies (Friedman et al, 2005). The guide is based on a grounded theory approach where obligations were refined based on codes actually found in practice. This involved the

initial analysis of 52 professional codes and subsequent refinement following a study of a further 18. As Friedman *et al* (2005, p.47) points out by using the matrix to analyse an existing code it will be compared with the obligations of over 70 codes of professional bodies. The PARN matrix formed the basis for the benchmarking exercise.

Table 4.6: Existing IOSH Code Evaluation

No	Obligations (as defined by PARN)	Freq	Modality Level	Code point
1	Good Citizen			
1.1	General law	2	2	2, 18
1.2	Specific law	2	2	15,19
1.3	Social norms	0	-	-
1.4	Loyalty	1	3	1
2	Expertise/ Competence			
2.1	Exercise of competence	1	2	4
2.2	Maintaining competence	1	3	4
2.3	Working within competence	1	2	5
2.4	Indemnity insurance	1	2	16
2.5	Encourage others to maintain competence	2	4	4,6
2.6	Comply with CPD	1	2	4
3	Character/ Values			
3.1	Calls to be of good character	0	-	-
3.2	Calls to be professional	1	3	1
3.3	Courtesy	0	-	-
3.4	Confidentiality	1	2	15
3.5	Dignity	1	3	1
3.6	Diligence	0	-	-
3.7	Empathy	0	-	-
3.8	Fairness	0	-	-
3.9	Honesty	1	2	3
3.10	Independence	1	2	1
3.11	Integrity	0	-	-
3.12	Impartiality	1	4	12
3.13	Reliability	1	4	3
3.14	Selflessness	0	-	-
3.15	Trustworthiness	0	-	-
3.16	Objective	1	4	3
4	Conduct: People			
4.1	Communication – interpersonal	0	-	-
4.2	Managing professional relationships	1	3	7
4.3	Support development of others	1	4	4,6
4.4	Safeguarding others	3	2/3	1,7, 14
4.5	Respecting others	4	2	1,9,10,17
4.6	Equal Opportunity	1	4	6
5	Conduct: Business			
5.1	Handling assets	0	-	-
5.2	Following structures/procedures			
5.3	Financial Propriety	1	2	16
6	Conduct: General			
6.1	Managing conflicts of interest	1	2	12

No	Obligations (as defined by PARN)	Freq	Modality Level	Code point
6.2	Being accountable/responsible	2	2/3	6,7
6.3	Competing fairly	1	2	9
6.4	Complying with the Code itself	1	2	19
6.5	Whistle-blowing	0	-	-
6.6	Communication – data/info	5	2	8,13,14,15,18
6.7	Upholding reputation	1	2	8
6.8	Take responsibility for those under their supervision	2	2	4, 6
	Total	44	N/A	44

There are obligation areas specified in the PARN guidance that are not covered in the IOSH Code. However as Friedman *et al* (2005, p.83) points out when assessing a code for comprehensiveness it is not recommended that all gaps are filled only that gaps are reflected on by the profession as to whether a gap should be filled or ignored. Handling assets has no mention in the IOSH Code however this would seem to be an appropriate omission as IOSH members do not readily find themselves handling assets as part of their professional role. An interesting omission from the existing Code is that of whistle-blowing which for anyone involved in health and safety would seem to be a significant oversight and would require inclusion in any future Code in some form. The comparison against the adapted PARN matrix also demonstrates the multiple obligations and overlaps identified in the previous analysis with 44 obligations cited out of 19 Code points and with many of the Code points being identified against multiple obligations indicating some overlaps as previously identified.

Table 4.7: Frequency of Beneficiaries as Defined by PARN in Relation to the Existing IOSH Code

Beneficiaries	Freq	Code Point
Society	1	1
Client	3	12,13,16
Employer	3	12,13,16
Prof Assn	0	-
Profession	7	8,10,4,12,13,18,19
Sub-ordinate	2	6,4
Colleagues	3	1,8,9
Self	0	-
Other	5	1,4,7,14,15
Not Specified	5	2,3,5,11,17
Total	29	

The interpretation of who the beneficiary was in the existing Code was not always clear. In most instances the beneficiary was implicit rather than explicitly stated in any Code point. For example, the profession as a beneficiary was implied in the majority of the 7 incidents identified. Despite this limitation it did provide a useful check to identify where beneficiaries had been omitted and whether they needed to be included more explicitly in the revised version. It does raise an important question about health and safety as a profession. Unlike law or medicine the identification of a client is not clear for the health and safety professional, they may seek to ensure a healthy and safe workplace for employees but in achieving this they often have an indirect relationship with the employees. So for the health and safety professional the definition of a client is not always clear, it could be many employees at once, the employer as a corporate body or even the public at large. This is perhaps why a significant number of Code points have implied multiple beneficiaries.

4.3.7 Comparison with other Codes

The next step was to benchmark against the 7 chosen professions to reveal any weakness in the existing Code and opportunities for development of the new Code based on information gains from examining other professional codes.

Table 4.8: Brief Comparison of selected Professional Bodies

Body	Est.	Number of members	Code & Guidance Volume In Pages	Guidance on Code Points	Comments
Institution of Occupational Safety & Health (IOSH)	1945	38,000	16	Y	Royal Charter awarded 2002. Published as a 'Code of Conduct' with guidance and disciplinary procedures.
Royal Institute of Chartered Surveyors (RICS)	1871	136,000	5	Y	Published as 'Rules of Conduct for Firms' and Rules of Conduct for Members'. Separate publication in book form for members. Guidance and disciplinary procedures
Royal Institute of British Architects (RIBA)	1834	128,000	8	Y	Royal Charter awarded 1837. Published as a 'Code of Professional Conduct' as 3 core principles supported by further guidance on upholding the principles and further explanatory guidance
Chartered Institute of Personnel and	1913	135,000	8	N	Royal Charter awarded in 2000. Published as a 'Code of Professional Conduct and

Body	Est.	Number of members	Code & Guidance Volume In Pages	Guidance on Code Points	Comments
development (CIPD)					Disciplinary Procedures'
Chartered Institute of Environmental Health (CIEH)	1883	12,000	3	N	Royal Charter awarded 2000. Published as a 'Code of Professional Conduct' without additional guidance or disciplinary procedures
International Institute of Risk & Safety Management (IIRSM)	1975	9,000	1	N	1 page list of ethical statements in relation to the organisations mission statement. Published as a 'Code of Ethics'
British Occupational Hygiene Society & Faculty of Occupational Hygiene (BOHS)	1953	<10,000	3	N	Published as a 'Code of Ethics'. Without additional guidance or disciplinary procedures
Institute of Ergonomics and Human Factors (IEHF)	1949	1500	5	N	Publishes as "Code of Professional Conduct" online only. 15 Code points.

An appraisal across the chosen professions revealed that IOSH along with RICS and RIBA, were the only professions in the group to have guidance accompanying the Code. There was no association between the size of the profession and its document. Although RICS does have a published book of guidance for members, this was not available on the website at the time. RICS also divides its rules between members and firms of surveyors. IOSH unlike RICS, does not typically operate in firms, although there are consultancies that could be viewed in a similar way.

Table 4.9: Comparison of Professional Bodies by Code Points, Overlaps, Number of Obligations and Guidance

	Number of Code Points	Number of Overlaps	Number of Obligations	Guidance on Code points	Comments
IOSH	19	26	44	12/19	Within the Code relating directly to individual Code points
RICS	7	0	19	Y	In the form of help sheets
RIBA	3 (plus 16 quasi Code points)	0	11	Y	Code is divided into 3 brief principles with explanatory guidance articulated as Code points, in addition there is further guidance provided for most Code areas but not directly related to each Code point.
CIPD	11	9	18	0	No guidance available on the website

	Number of Code Points	Number of Overlaps	Number of Obligations	Guidance on Code points	Comments
CIEH	12	4	22	0	No guidance available on the website
IIRSM	8	2	22	0	No guidance available on the website
BOHS	27	8	47	0	No guidance available on the website
Erg Soc	15	4	23	0	No guidance available on the website

In comparison with other professional bodies IOSH has significantly more overlaps in its Code points, largely due to multiple obligations within each Code point making this more prevalent. RICS and RIBA had no identified overlaps with multiple obligations appearing in some of its Code points (although the incidence of these was lower than those of other professions in the group).

Table 4.10: Comparison of Professional Bodies by Broad Categories of Obligation Based on the PARN Matrix

	Good Citizen	Expertise/ Competence	Character Values	Conduct: People	Conduct: Business	Conduct: General	Total
IOSH	5	7	8	10	1	13	44
RICS	0	2	3	1	1	1	8
RIBA	0	2	3	1	1	1	8
CIPD	0	3	9	1	0	3	16
CIEH	2	1	5	2	0	3	13
IIRSM	1	2	2	1	0	4	10
BOHS	1	3	10	4	1	8	27
ErgSoc	2	3	7	6	2	6	26
Total	11	23	46	26	6	39	151

An idiosyncrasy of the analysis is that obligations analysed in different ways based on slightly alternative criteria do not always tally across the tables. For example, in the IOSH Code the initial analysis revealed that although there were 19 Code points many of these actually had multiply obligations, in this case totalling 44. However, when analysing the Code, for example, for the frequency of language used in the obligations, a lower number of obligations was tallied, in this case 29. The difference can be explained by the fact that in some cases there can be multiple obligations with a single cited compulsory verb such as 'shall'. Comparing codes can also have additional problems, for example some codes have obligations at different levels with obligations appearing in the foreword, as code points and also in some cases in the guidance. The Royal Institute of British Architects has three code points articulated under 3 principle headings shown below:

Principle 1: Integrity

Members shall act with honesty and integrity at all time.

Principle 2: Competence

In the performance of their work Members shall act competently, conscientiously and responsibly. Members must be able to provide the knowledge, the ability and the financial and technical resources appropriate for their work.

Principle 3: Relationships

Members shall respect the relevant rights and interests of other (RIBA 2008 p.2)

In addition to this, RIBA also has guidance that contains additional obligations, for example, under the Principle of Honest and Integrity the guidance states;

1.2 Members should not allow themselves to be improperly influenced either by their own, or others', self-interest. (RIBA 2008, p3)

This in most other Codes, including the existing IOSH Code, would be considered a Code point and not guidance. The RIBA approach to their Code is not necessarily wrong; it is simply a different approach. It does however make benchmarking more difficult. The benefits of briefer Code points are evident in terms of improving recall and interpretation with limited scope for overlaps or multiple obligations with the associated problems therein.

Table 4.11: Frequency of Types of Language used in the Obligations by Profession

	Should	Must	Shall	Expected to	Are required to	Other	Total
IOSH	1	4	22	0	1	1	29
RICS	0	0	7	0	0	0	7
RIBA	0	1	3	0	0	0	4
CIPD	0	10	0	1	1	0	12
CIEH	0	1	11	0	0	0	12
IIRSM	8	0	0	0	0	0	8
BOHS	0	0	28	0	0	0	28
Erg Soc	1	0	20	0	0	2	23
Total	10 8%	16 13%	91 74%	1 1%	2 1.5%	3 2%	123

The verb “Shall” is the most frequency used, accounting for 74% of all cited obligations in the 8 Codes analysed with ‘Must’ the second most cited at 13%. The implications of this analysis are that most obligations within codes are cited with a high level of compulsion. The notable exception to this is the IIRSM Code that cites ‘should’ for all the Code points. ‘Should’ has a quasi-obligatory status as a verb and therefore can be viewed as imposing a lower level of compulsion on the member than ‘shall, must or are required to’.

Table 4.12: Frequency of Obligations to Beneficiaries by Profession Based on the PARN Matrix

	Society	Client	Employer	Prof Ass	Prof	Sub ord	Colleague	Self	Other	Not Spec.	Total
IOSH	1	3	3	-	7	2	3	-	5	5	29
RICS	-	1	-	-	-	-	-	-	-	8	9
RIBA	-	-	-	-	-	-	-	-	1	10	11
CIPD	4	2	4	4	-	5	-	-	-	5	24
CIEH	-	-	-	-	3	-	1	-	3	6	13
IIRSM	-	1	1	-	1	1	1	1	3	1	10
BOHS	3	3	2	2	3	1	2	3	7	7	33
Erg Soc	0	1	0	0	1	1	1	0	6	6	16
Total	8	11	10	6	15	10	8	4	25	48	145

There is little consistency in the frequency of obligations to beneficiaries. RICS and RIBA tend not to specify a beneficiary in most cases, whereas the BOHS have done so in most cases. Friedman (2005, p.50) recommends that professional bodies give consideration to all potential beneficiaries. This will clearly vary between the professions depending on the nature of their activities. A caring profession for example may have much of the Code directed towards clients as beneficiaries. In the PARN evaluation that included RICS, RIBA and CIPD; the client was the most frequently cited beneficiary, not including ‘not specified’ and profession was the least frequent. Interestingly ‘profession’ referred to as the ‘institution’ is specified as a beneficiary in the IOSH Code more frequently than any other.

From the initial critical review of the IOSH Code some clear themes have emerged. The Code is not logical in its presentation, it is difficult to remember and there are overlaps in the obligations. The language used in the obligations varies from higher-level modality at level 2 to low level modality at level 4 making any charge for misconduct for lower level modality obligations difficult to justify. A number of the Code points in particular require some thematic categories under which to group

individual Code points, this will make the Code easier to recall for members in terms of overriding principles and provide some logic for the layout of the Code.

An update was provided to the PC at the Nov 2008 meeting and a discussion was held on how to progress the Code development. An excerpt of the minutes is provided below:

SL had provided a paper highlighting the issues about a Code of Conduct review. The PEC members agreed that the paper presented a very positive way forward to undertake this piece of work. Minutes from the PEC Meeting of 6th Nov 2008.

4.5. Conclusion

The content analysis and benchmarking reveal a number of weaknesses in the existing IOSH Code and provided a useful basis from which to justify any further development. From the PEC's point of view the exercise provided a record of our deliberations and rationale for change. This record will be useful for any future developments as well as providing a useful starting point for any other similar profession thinking of going through the same process. The PEC were compelled to use an existing standard for the Benchmark to ensure a degree of credibility in the process, hence the use of the PARN guidance throughout the exercise. PARN was not uniquely used however, with numerous adaptations made to fit our particular circumstances. The early content analysis and later direct comparisons with other professional body Codes was undertaken without the use of the PARN guidance. Comparisons were also made against CEPLIS and the Noland Committee principles to provide assurance to the IOSH Council that a thorough review had taken place. Stage 1 was successful in achieving the original aim of this component. Whilst more analysis could have been undertaken, the level of further benefits to be derived did not justify taking the potential risks associated with delaying the development of the new IOSH Code with regard to meeting the PEC expectations of working time-scales.

4.6 Reflection on Stage 1

At the conclusion of this stage it was clear that there was much work to do, not only in presenting a new structure for the Code but also re-thinking the guidance and disciplinary process. The analysis undertaken to date indicates that the existing Code was not fit for purpose and failed to meet the basic requirements of brevity, consistency and relevance that the Committee knew were necessary for an emerging Chartered profession.

The timing of the proposal, given the developing political concern over health and safety practice was, I felt, completely appropriate. The focus in the media on health and safety practice, although being largely negative, gave some useful impetus for the project and acted as a catalyst for change. My own resolve and confidence to make this proposal was hardened by the fact that, at some point, someone else would realise the necessity for an updated Code and the opportunity to personally influence its development would then be lost. I was also certain that a change of this importance should be underpinned and systematically consulted on if it was to be successful. Success to me meant not only a well-written Code but also a raising of awareness and an increase in knowledge of professional ethics as well as Conduct issues. Leading the project would involve the active participation of Committee members and I would need to be careful not to dominate the development, being prepared to let go when necessary.

The use of the PARN guidance was essential in providing a robust framework for the benchmarking. I had my doubts as to whether the level of detail would be appreciated by the Council and this raised my first of many concerns about the compatibility of research and real world development. An excerpt relating to the use of the PARN guidance and initial thoughts on leading the review is given below:

The use of the PARN frameworks was valuable but is likely to be far too detailed for the Committee. I will need to find a way of balancing my responsibilities for leading the review and the needs of the DProf. Already the Chair wants to know when it will be finished and I am concerned that I may not meet the expectations here...Learning diary excerpt, Nov 2008

Although I felt some concern over its detail it became apparent that the Committee was interested in assurances only that some benchmarking was being undertaken and the main points that needed to be addressed. For me it provided the basis I needed to make confident recommendations on where to progress the Code and why. The detail of the benchmarking exercise once completed was kept in the background as a record of our rationale for the subsequent development, should anyone ask to see it. Initially this concerned me, however I have since regarded this as rational behaviour on the part of the Committee who considered it my role as leader to conduct this level of review and then report back only the top-level outputs necessary for them to make a decision on how to proceed to the next stage. In some way this is analogous to my experience of preparing board reports where volumes of information are reduced to minimal key points usually on one side of paper. The trust being that the points were underpinned with evidence but the detail of the evidence was not required in making strategic deliberation. Interestingly I found myself with a foot in both camps, as researcher I was clearly motivated to ensure sufficient underpinning of any assertions I was making, whereas as a member of the Committee I did not always appreciate being bogged down with detail when making deliberations. The value of the benchmarking was to give confidence for our motivation to rewrite the Code and provide evidential background should anyone in the future wish to understand our rationale for making these changes.

In leading the project I was keen that the process of reviewing and developing a new Code would lead to positive organisational change. The influence for change was with the participants, members of the Committee, who as practicing professionals would inevitably be instrumental in the wider dissemination of the Code and all that went with it. As a leader I was motivated towards an authentic style of leadership, as described by Avolio *et al.*, (2004, p.4) that in turn would lead to lasting transformational change (Bass and Steidlmeier 1999). By the end of this stage, and with agreement from the Committee to proceed, I was feeling more confident as reflected on in the excerpt below:

I feel confident that we are heading in the right direction. There are some clear points for action that have come out of this stage and it looks like the

Committee are all agreed on where it needs to go. Already there is some transformation in the way we are looking at cases coming through and some acknowledgement that widespread understanding of the Code is probably weak. Learning diary excerpt, November 2008.

The review had justified the original proposal that the Code required updating to make it fit for purpose. Although the Code was relatively comprehensive in comparison with other Codes there were some weaknesses that had been identified. These were discussed with the outputs captured in the mind map in Figure 4.1 below. In concluding, the Committee agreed to support the next stage of development, indicated in the minute excerpt shown below:

The Committee concluded that this would be a valuable piece of work to underpin the professionalism of health and safety practitioners. PC minutes dated 6th November 2008

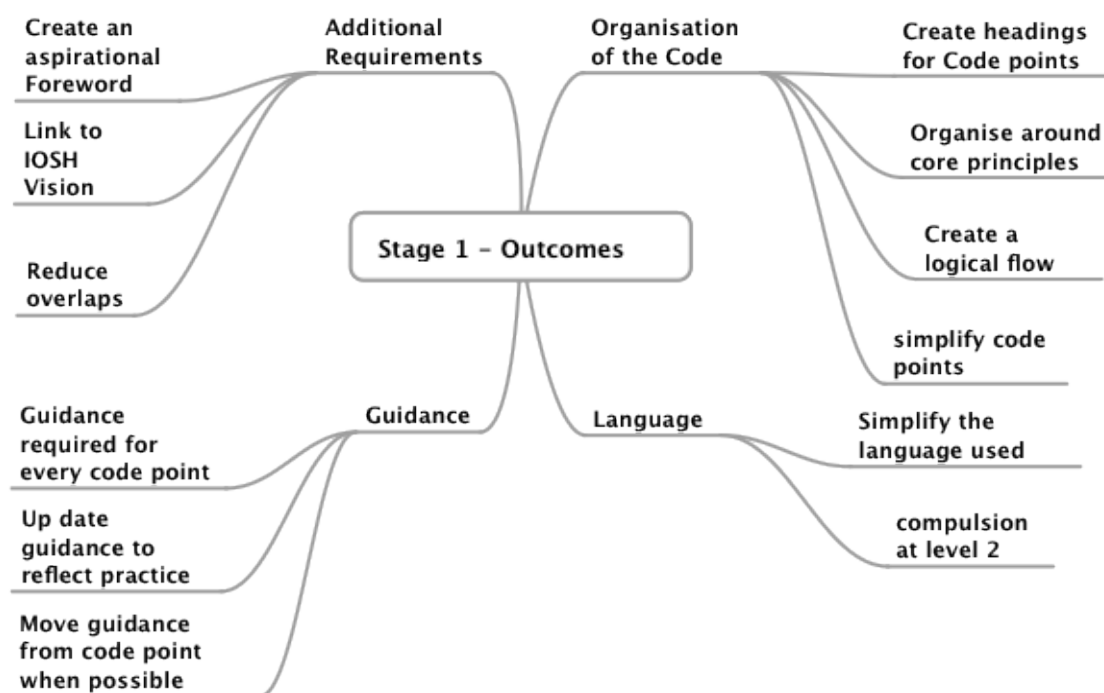


Figure 4.1: Mind Map Derived From Stage 1 Outcomes

The following 10-point strategy emerged from the Stage 1 benchmarking and review exercise following consultation with the Committee.

1. Create principle-based headings to organise the Code and limit these to 7 to improve recall.
2. Ensure the Code is logical, beginning with the most important obligation where possible.
3. Use a consistent modality throughout.
4. Reduce overlaps where possible.
5. Simplification of Code points and avoiding multiple obligations.
6. Make clear concise statements where possible and supplement with guidance for every Code point
7. Use real world examples in guidance to reduce the abstraction and promote engagement with the Code.
8. Create a foreword that captures the Code's intention and high-level ethical intent.
9. Allow the creation of supplementary guidance.
10. Review the disciplinary procedures and identify areas for improvement.

These were not recorded in the minutes but emerged from discussions held during the committee meeting and were recorded in my personal notes. In noting that the committee continued to support the work an element of trust was being given to me in continuing the project and, although I was leading the review, it became clear that the power was not mine alone but rested with the committee as a whole. It was also clear that the committee was a highly competent team that would provide benefits in terms of knowledge and experience, whilst presenting challenges in terms of gaining consensus and avoiding conflict. Transformation was occurring and as Chatterjee (1998, P.67) points out this transformation can occur in both the leader and the followers.

CHAPTER FIVE – STAGE 2: DEVELOPING THE NEW IOSH CODE OF CONDUCT

5.1 Plan

The plan for Stage 2 was to take forward the strategy that emerged from Stage 1 and produce a draft of a new IOSH Code based on what was learnt from the benchmarking exercise. In addition to this an analysis of historical allegations of misconduct received by the Committee was undertaken to provide insight into how the existing Code has been applied in such circumstances, the nature of the breaches and the application of disciplinary procedures. During Stage 2 IOSH took the step of appointing an Ethical Practice Manager to provide technical advice on allegations of misconduct. There had been a long-term plan to create this role at IOSH in recognition of the growing number of ethical Conduct issues being presented to the PC. This was a welcome development and recognition that professional Conduct was an important issue that deserved a dedicated resource. Whilst retaining the lead role in developing the new Code I now had someone to collaborate with and provide technical assistance at an important time in the project.

5.2 Action

The actions for Stage 2 as they emerged from Stage 1 are captured in table 5.1 as they relate to the 10-point strategy that emerged from Stage 1 with action as agreed by the Committee.

Table 5.1: Actions for Stage 2 Mapped Against the 10-Point Strategy

	Strategy	Action
1	Create Principle based heading to organise the Code and limit these to less than 7 to improve recall.	Review other Codes with principle headings and through further consultation allow principle headings to emerge. Map against PARN, existing Code and established literature.
2	Ensure Code is logical beginning with the most important obligation where possible.	Establish priorities for principles by benchmarking against other Codes, consultation, reflection on practice and allegations of misconduct
3	Use a consistent modality throughout.	Develop options for discussion with the Committee. Use base level modality to create stronger obligations.
4	Reduce overlaps where possible.	Continually test the proposed Code using the method from Stage one to reduce overlaps.
5	Simplification of Code points and avoiding multiple obligations.	Use a reductionist technique to ensure each Code is related to a single obligation where possible. Continually

	Strategy	Action
		test this against the method in Stage 1.
6	Make clear concise statements where possible and supplement with guidance for every Code point.	Create a clear distinction between Code and guidance. Produce separate sections for Code points and Code points and guidance. Through consultation, interviews (Stage 3) and reviewing cases received develop themes for guidance based on current practice for each new Code point.
7	Where possible use examples in guidance to reduce the abstraction and promote engagement with the Code through the use of meaningful real world examples.	Real world examples form experiential learning of Committee members, interview participants, researcher and received allegations of misconduct. Continual refinement to match examples from experience with Code points and <i>vice versa</i> .
8	Create a foreword that captures the Code's intention and high-level ethical intent.	The development of a foreword for the new Code will be an emergent and iterative process based on consultation with the Committee, further benchmarking against other Codes and reflection on the purpose of the Code for the profession going forward.
9	Allow the creation of supplementary guidance.	Separating the Code points from the guidance section will allow the further development of guidance as new experiences develop in practice. By making a clear connection with the Code points and guidance there is an opportunity for more practice based guidance that may relate to the Code on issues formally covered in the existing Code on education, consultancy etc.
10	Review the Disciplinary Procedures and identify areas for improvement.	Analysis of historical cases, reflection on current cases and the application of the disciplinary procedure. Consultation with Committee members on possible changes.

The development of a draft Code and themes for guidance involved collaborative working with the newly appointed Ethical Practice Manager (EPM), as mentioned in the PC minutes of the 20th February 2009:

SA also welcomed SB, who had recently been appointed as EPM IOSH. It was Simon's role to advise the Committee on issues arising from the Code of Conduct and potential disciplinary hearings. PC minutes dated 20th Feb 2009

There followed a discussed at this meeting on how to progress the Code development. Unfortunately there had been a delay in presenting a draft at this meeting, however it was agreed that a draft would be ready for the June 09 PC meeting for comment.

SL, who was leading on this work apologised for the delay in the process due to his work commitments. An interim report should be available by the June 11th PC meeting. The reason why the professional body has such a Code should be highlighted in the opening to the Code. SL and SB would work together on the new Code. PC minutes dated 20th Feb 2009

5.3 Observations

Stage 2 involved extensive consultation with the PC, the formation of a working group from the PC members and collaborative working with the newly appointed Ethical Practice Manager. There was a general acceptance that there should be fewer Codes points as many confessed to not being able to recall the existing Code. This raised an important question as to the ideal number of Code points and how to present them. According to (Baddeley 1986; Miyake and Shah 1999) human cognitive working memory is quite limited in capacity and duration when presented with new information, for example Miller (1956) demonstrated through experimentation that it is generally difficult for humans to recall more than 7 serially presented random numbers. Techniques to improve this include grouping numbers into meaningful dates for example can improve the process but essentially needs to be learned and rehearsed to have any beneficial effects. Although not random in presentation it would seem appropriate to try to limit the Code points and where possible group them under headings relating to ethical principles.

5.3.1 Developing Principle Headings

One of the key issues to arise from the review of the Code is that Code points should ideally be grouped under headings. Out of the 8 professions benchmarked against only 3 of them applied headings in this way. These are summarised in table 5.2 below.

Table 5.2: Principle Headings in Benchmarked Codes

Professional Body	Principle Heading
Royal Institute of Chartered Surveyors (RICS)	Competence Service Life Long Learning Solvency Information to RICS Co-operation
Royal Institute of Building Architects (RIBA)	Integrity Competence Relationships
British Occupational Hygiene Society (BOHS)	General Integrity Professional Opinion Competence Confidentiality Conflict of Interest

Competence appears for each body however, beyond that there is no consistency in the terms used. A wider search of other professions found the same to be true. In addition to competence, Integrity and conflicts of interest were also frequently occurring headings. Some headings arguably are in fact sub headings, for example integrity is a broad term that could include honesty and conflicts of interest amongst others.

The use of headings was rationalised following discussions with the EPM as a starting point for the new IOSH Code. Following the review of established literature and by comparing other Codes of Conduct, it was decided that the virtues of integrity, honesty and respect should be included. Respect was rationalised on the basis that issues of poor Conduct often involved behaviour that was un-cooperative or perhaps offensive and the broad term of respect appeared to capture these well. Competence was the next heading capturing education, continuing professional development and membership. After much discussion and examination of the existing Code which had been deconstructed during Stage 1 it became apparent that areas that were not grouped under the 4 headings already mentioned were more orientated to the client being service provisions. Service then became our final heading. As a final bit of creative thinking we organised the headings to create the acronym 'CHRIS' to aid recall.

1. **Competence**
2. **Honesty**
3. **Respect**
4. **Integrity**
5. **Service**

5.3.2 Comparing the New IOSH Code Format to Existing Guidance

To establish the robustness of our new principle headings to ensure nothing was left out we carried out several mapping exercises on the new proposed headings and Code points against the PARN broad categories, CEPLIS provisions for liberal professions in Europe and the Noland Committee principles. Mind maps are shown below to illustrate the mapping process:

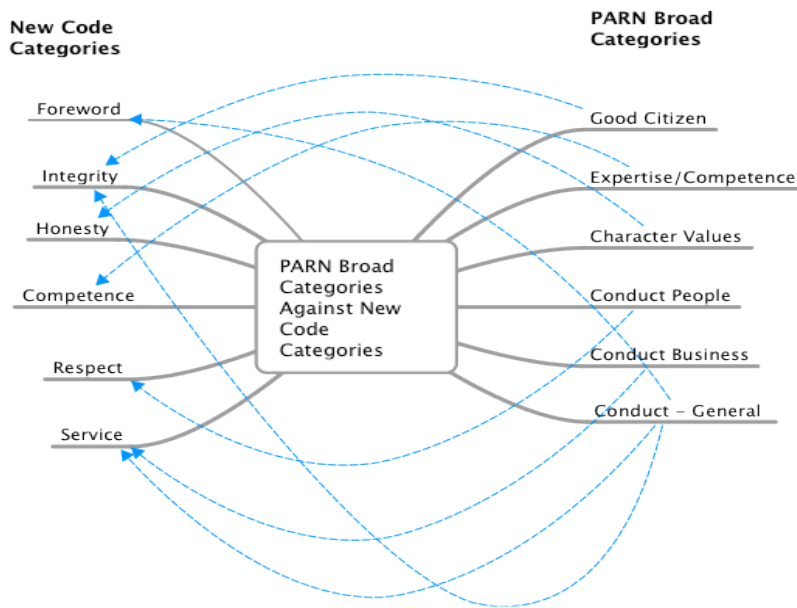


Figure 5.1: PARN Broad Categories Mapped against New Code Categories

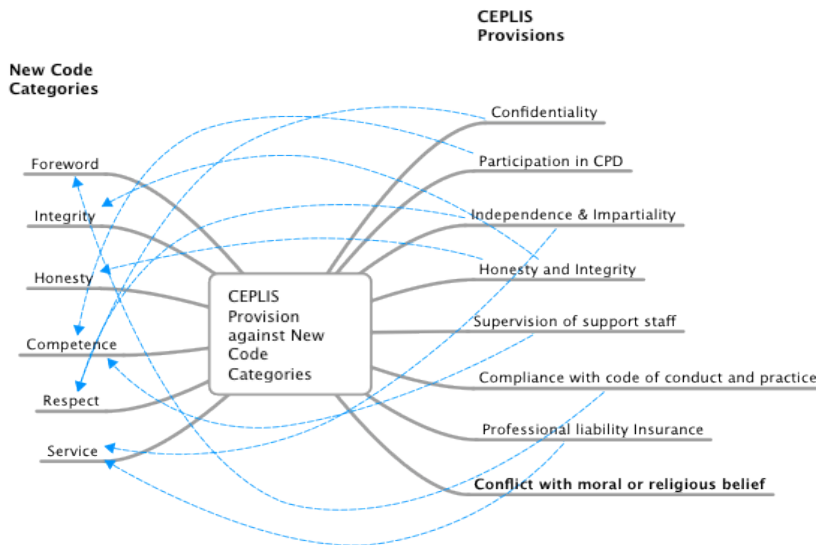


Figure 5.2: CEPLIS Provisions Mapped against the New Code Categories

The CEPLIS provision relating to 'conflict with moral or religious belief' is not mapped against any of the new Code categories. It is not explicitly mentioned in the new Code although there is an implicit obligation through the principle of 'Respect'.

Issues concerning health and safety practice and religion do on occasion arise however. For example there has been an exemption in health and safety law for baptised Sikhs who never cut their hair and wear a turban from wearing head

protection. These exemptions are usually determined on a case-by-case basis as they arise. As the HSE clearly states in its guidance on the subject:

There are no exemptions for religious groups other than turban-wearing Sikhs relating to the requirement to wear head protection on construction sites. HSE (2010, p.3)

Cooperation on accident prevention and incident investigation strategies could be brought into conflict with the religious belief that espouses the concept of fatalism as discussed by Dixey (1998, p.197-208). Beebee *et al* (2009, p.45) examines how the understanding of causation by Muslims can be affected by a belief that God is part of the causation model rather than a rationalist approach, accidents are caused by identifiable events that can be changed through intervention. Clearly there is potential for offence if a health and safety professional refuses to acknowledge this perspective in an accident investigation. There is also potential legal conflict where a person of religious conviction refuses to accept any personal responsibility for an action leading to an accident in preference to a belief that God is ultimately responsible for such actions.

The principle of respect implicitly covers this area and as the HSE have already discovered it is best to allow issues to arise rather than second guess how these conflicts would occur in practice. It is an area however that could be included in guidance and also as part of any case study based education on professional ethics. As the UK becomes ever more diverse the importance of ensuring that services and practices meet the needs of all becomes ever more important.

5.3.3 Comparing the New IOSH Code against the Existing IOSH Code

It was important to ensure that existing Code points were not disregarded in favour of new Code points or left out entirely without some recognition and rationalisation first. To achieve this further mapping was undertaken to demonstrate how the proposed new categories related to the existing Code points. This is shown in figure 5.3 and table 5.3 below:

Figure 5.3: Mapping Exercise of Existing Code Thematic Heading to the Proposed Code Principle Headings:

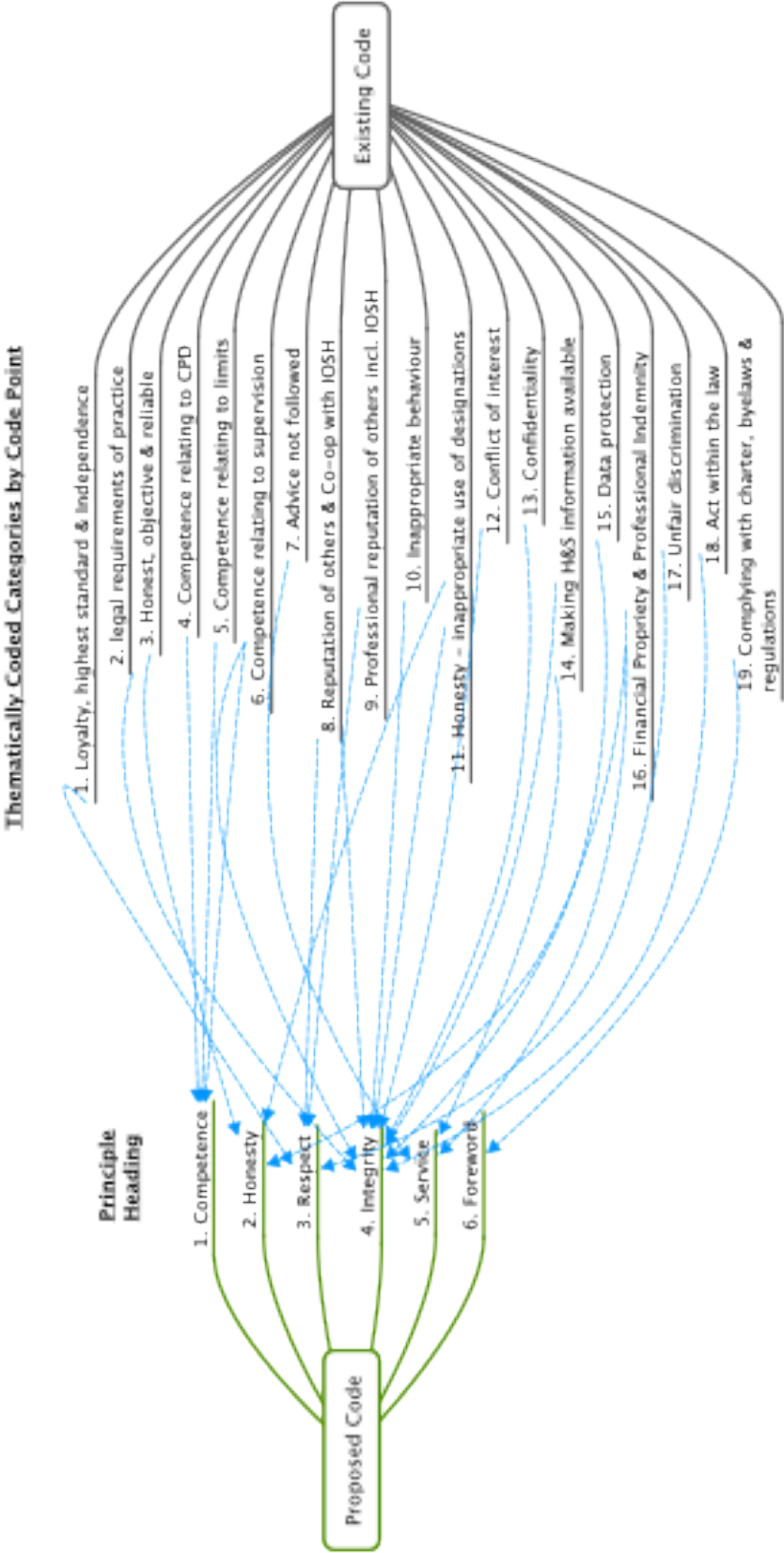


Table5.3: Tabular Representation of the Code Mapping Exercise

Existing Code		Proposed Code	
Code point	Topic	New Code Point	Principle Heading
1	Highest standards	3.1, 3.2 & 3.3	Respect
2	Comply with law	N/A	Law statement in foreword
3	Honesty	2.1	Honesty
4	Competence (CPD)	1.1	Competence
5	Competence (limits)	1.2	Competence
6	Fair treatment	1.2, 1.3, 4.5,	Competence Integrity
7	Advice not followed	5.3	Service
8	Reputation of others	3 all 4.4	Respect Integrity
9	Professional reputation of others incl. IOSH	3.2	Respect
10	Inappropriate behaviour	4 all	Integrity Foreword
11	Use of membership/designations/ qualifications	4.1	Integrity
12	Conflict of interest	4.2	Integrity
13	Employer/client/IOSH confidentiality	4.3	Integrity
14	Making H&S information available	4.5 5.1	Integrity Service
15	DPA compliance	N/A	Law statement in foreword
16	Financial propriety	5.3	Service
17	Unfair discrimination	3.1	Respect
18	Act within law	N/A	Law statement in foreword
19	Comply with IOSH Charter, Byelaws and Regulations	N/A	Foreword

To create Code points under these new thematic headings we began with the existing IOSH Code, taking a basic form of conceptual reductionism as described by Jones (2000, p27) to reduce the words used whilst retaining the same meaning. This also follows the law of economy as in Occam's razor:

Pluralitas non est ponenda sine necessitate; Plurality should not be posited without necessity. Occam's razor in Encyclopædia Britannica (2012,p1)

The principle in this context can be expressed to mean that entities, in this case Code points, are not to be multiplied beyond necessity. The Code points were therefore created to be as simple as possible, within the remit of maintaining meaning, but no simpler than that. Once this is achieved any further explanation can be provided in the guidance accompanying each Code point. This approach avoids the problem of distinguishing Code points from guidance that is apparent in the existing Code. For example, in the existing Code there are 3 Code points that could be grouped under competence and reduced;

4. Members shall take all reasonable steps to obtain, maintain and develop their professional competence by attention to new developments in occupational safety and health and shall encourage others working under their supervision to do so. They must comply with the Institution's Continuing Professional Development (CPD) scheme, if required to do so. IOSH Code of Conduct (Undated, p4)

5. Members shall not undertake responsibilities in relation to health and safety which they do not believe themselves competent to discharge. Members shall acknowledge any limitations in their own competence, and shall not undertake any activities for which they are not appropriately prepared or, where applicable, qualified. IOSH Code of Conduct (Undated, p4)

6. Members shall accept professional responsibility for all their work and shall take all reasonable steps to ensure that persons working under their authority or supervision are competent to carry out the tasks assigned to them; are treated with fairness and equal opportunity; and accept responsibility for work done under the authority delegated by them. IOSH Code of Conduct (Undated, p5)

In the final version of the Code these were grouped under the heading competence and reduced as follows;

Competence

Members are required to¹³:

2.1 Ensure they are competent to undertake proposed work;

2.2 Ensure persons working under their authority or supervision are competent to carry out the tasks assigned to them;

2.3 Undertake appropriate continuing professional development and record it in the manner prescribed by the Institution; and

2.4 Ensure that they make clients, employers and others who may be affected by their activities aware of their levels of competence. IOSH Proposed Code of Conduct, Unpublished attached at appendix F

There were several points developed that did not directly map against the existing IOSH Code but emerged through discussions with the Committee and the benchmarking exercise. In the final version of the new IOSH Code these were articulated as follows:

Members are required to:

Integrity

1.1 Be honest;

Respect

3.2 Respect the rights and privacy of other people and organisations;

3.6 Respond promptly and appropriately to disputes and complaints.

Service

4.5 Have due regard for levels of service and customer care reasonably expected of them.

IOSH Proposed Code of Conduct, Unpublished attached at appendix E

The first draft was presented to the PC in June 2009 and recorded in the minutes, an excerpt is provided below:

¹³ In the first version of the revised Code each Code point was given the modal auxiliary verb of 'shall' or 'must'. It was later decided during stage 4 to remove these and simplify the Code with the semi-modal verb "members are required to" under each principle heading. As there were many subtle changes to Code I have used the final version when making this point to avoid any confusion.

A paper had been produced by Shaun Lundy and SB indicating the proposed revisions that could be recommended to IOSH Council – based on five core principles - Competence, Honesty, Respect, Integrity and Service. This was currently the ‘top level’ Code and guidance on its operation would be produced to support it. PC minutes dated 11th June 2009

The word integrity is not used in the existing version of the IOSH Code and members of the Committee felt that integrity was a fundamental part of being a professional and should therefore be included. Honesty in the first version of the proposed IOSH Code appeared as a principle heading although eventually this became a subset of integrity after some discussion, this is discussed further in Stage 4. Honesty is mentioned in the existing IOSH Code however only in terms of practitioners giving their professional opinion. It was felt by many on the Committee that honesty as a virtue must go beyond professional advice and members should be honest at all times in meeting public expectations for professionals.

5.3.4 Mind Mapping the New IOSH Code

The organisation of the 1st version of the Code that was made available to PC members in June 2009 is shown in the mind map in figure 5.4 below:



Figure 5.4: Mind Map Capturing the Structure of the 1st Version of the New IOSH Code Presented on the 11th June 09

Some discussion on dissemination was also raised based on an underlying concern that the new IOSH Code as with the existing version, may not be widely used or understood if not purposefully disseminated. In the same theme as dissemination the matter of continuing professional development and education on ethics was raised. There was an acceptance that the IOSH Code and guidance would not in itself improve ethical Conduct without the deliberate effort of embedding it through education and CPD together with wider publicity for not only members but also employers and the general public.

There was also some discussion on whether we would be able to meet the proposed completion date of the 31st March 2009 in the work-plan. After some discussion this was revised, however the Chair expressed his concern over delaying the work too much as member of the IOSH Council were expecting to see a draft version in the near future. There was also some acceptance that the work had grown beyond the

original task to include disciplinary procedures, education on ethics and future dissemination of the Code. Also as identified in Stage 1, there was missing guidance and the guidance that did exist in the original IOSH Code was out of date or inadequate. The work to develop guidance to supplement the new IOSH Code was a larger piece of work than had first been anticipated and one that would benefit from further broad consultation to capture the experiences of members. All of this would inevitably delay the work. The delays were accepted by the Committee, however the expectation that a near complete draft together with guidance should be available to PC members by the end of July 2009 was stated in the minutes, an extract is provided below:

The Chairman asked that this be produced by the end of July. The disciplinary procedures also would need revising and these would need to be subjected to legal scrutiny and possibly Privy Council approval before they could be used.
PC minutes dated 11th June 2009

5.3.5 Analysis of Allegations of Misconduct& Disciplinary Cases

As part of this stage we also began to look critically at previous allegations of misconduct and disciplinary cases. This allowed us to identify which areas of the existing Code were relevant to misconduct cases heard by the Committee. This provided insight into how the proposed IOSH Code would work under the same circumstances. There was also the opportunity to review how the disciplinary procedures functioned and identify areas for improvement, as mentioned in the June 2009 minutes. Details of cases reviewed by the Professional Committee are confidential and papers pertaining to them are contained in confidential minutes. It is however permissible to describe the cases anonymously without referring to any confidential information. For the purposes of the project, selected cases have been used for this purpose to highlight themes that have emerged from allegations of misconduct and in turn, how these have influenced the development of the new IOSH Code.

Data relating to these cases is shown in the tables below. The detailed analysis of cases was conducted during the period 2009 – 2011¹⁴ and formed part of a general briefing for the Committee as well as providing data for the presentation to the IOSH Council during the final approval stages. This was the period during which the researcher led the review and the Ethics Practice Manager commenced employment at IOSH.

Within the tables the terms cases and allegations are used. A case is a more general term that relates to the overall circumstances and individuals involved. Cases may include more than one allegation of misconduct. Allegations of misconduct are made against specific code points resulting, in some instances, in several allegations. For example, consider a case where a health and safety professional had lied on their CV to get a job, claiming to be a Chartered member when in fact they held Technician grade of membership. In the existing IOSH Code (Appendix D) this could give rise to 3 allegations of misconduct against the following code points:

Code Point 2

Members called on to give an opinion in their professional capacity shall be honest and, to the best of their ability, objective and reliable.

Code Point 8

Members shall not improperly use their membership or position within the organisation of the Institution for commercial or personal gain or use or attempt to use qualifications, titles and/or designations to which they are not entitled.

Code Point 12

Members shall not improperly use their membership or position within the organisation of the Institution for commercial or personal gain or use or attempt to use qualifications, titles and/or designations to which they are not entitled.

¹⁴ The original analysis of cases was started in 2009 and continued through to 2011 during which the project had moved onto the final stage 4. Every effort has been made to capture events by stage in a logical time line however occasionally stages overlap and are revisited as new information emerges. This is a consequence of real world research where the real world refuses to fit neatly into a predefined research methodology.

Table 5.4, below, demonstrates a significant increase in the number of cases reviewed by the PC over a 2 year period compared with the previous 8 years. This increase can be attributed in part to a general increase in membership during that time. Other reasons for the increase remain unproven but may be attributed to several factors including the broader distribution of membership in terms of role and management level. The increase coincides with the start of the project to review the exist Code which may have increased awareness of conduct related issues resulting in an increase in the number of cases being brought before the Committee.

Table 5.4: Cases Reviewed by the Professional Committee 2000 - 2011

2000 - 08	2009 – 2011	Total
21	18	39

Table 5.5 also demonstrates an upward trend with an increase in the number of the most serious cases that have attracted the highest sanction of expulsion from the Institution. These cases mainly involved serious criminal offences.

Table 5.5: Cases that Have Resulted in Expulsion from the Institution 2000 - 2011

2000 - 08	2009 – 2011	Total
2	5	7

The PC is limited in its powers and can be regarded as a review panel with some limited sanctions available to it. The PC provisionally reviews a case and the allegations of misconduct made by a complainant to decide whether there is a case to answer. Where the PC feels that a higher sanction is required it can refer a case to an independent disciplinary panel. For example in the case of the dishonest CV the PC may have chosen to reprimand the subject of the allegation; an action that is within their powers to take. As an alternative they could refer the case to a disciplinary panel where they may decide to suspend membership or even expel the person from membership. The subject has a right to appeal and representation at the disciplinary panel but not where the decision is made at the PC level. The subjects of an allegation who denies or disputes the allegations made against them are automatically referred to the Disciplinary committee.

In table 5.6 it can be seen that 7 cases of misconduct were denied by the subject at a PC stage and therefore referred to the disciplinary committee, with a further 4 referred with admission making a total of 11. Taking table 5.5 into account where there were 5 expulsions during this time it can be seen that a significant number of the decisions made by the disciplinary committee involved serious breaches of the Code. It is also worth noting the high number of cases (36) that were dismissed. These dismissals can be for a variety of reasons including lack of evidence, no breach of the Code or being beyond the Code's jurisdiction. Multiple allegations are also evident with 18 cases (table 5.4) involving 49 allegations of misconduct against the existing Code.

Table 5.6: Allegations Considered by the PC 2009 - 2011

Sanction	Number of Allegations
Dismissed	36
Denied – Referred to Disciplinary Committee	7
Admitted & Guidance Issued	0
Admitted & Reprimand Issued	2
Admitted – Referred to Disciplinary Committee	4
Total Allegations	49

In reviewing all cases and correspondence received, including those that did not amount to an actual case, it was useful to analyse the frequency of code points cited as a way of classifying the nature of the allegations received. In table 5.7 it can be seen that code points 8 and 10 are the most frequently cited and taken together account for nearly half (47%) of the citations during this time. A total of 7 separate Code points have been cited out of a total of 19 available in the current Code (37%), leaving a large portion of the existing Code apparently redundant.

Table 5.7: Frequency of Code Point or Disciplinary Section Cited 2009 - 2011

Code point or Disciplinary Procedure	Description using previously assigned thematic headings	Frequency	%
8	Reputation of others and cooperation with IOSH	31	24
10	Inappropriate behaviour	30	23
3.2.2	Amounts to unacceptable professional Conduct within the standards expected in the health and safety profession.	15	12
3.2.3	May bring the Institution or the health and safety profession into disrepute	15	12
3.2.4	Is prejudicial to the interest of the Institution	12	9
9	Respecting the professional reputation of others	12	9
18	Act within the law	9	7
3	Honest, objective and reliable	2	2
11	Honesty (use of membership, designation or qualifications)	1	1
12	Conflict of Interest	1	1
	Totals	128	100

The allegation involvement by type, either member, IOSH staff, employer or client and member of the public was also analysed and is shown in table 5.8 below:

Table 5.8: Frequency of Allegation Involvement by Type 2009-2011

Allegation involvement	Frequency	%
Member v Member	36	74
IOSH Staff Member v Member	10	20
Employer/Client v Member	3	6
Member of the Public	0	0
Total	49	100

The majority of allegations of misconduct involve member verses member disputes; these were often dismissed due to insufficient evidence and in some cases were viewed as either frivolous or vexatious in nature. IOSH Staff became involved in allegations either through membership issues or, occasionally, from monitoring the internet or media. Although members of the public could raise an allegation of misconduct against a member, there was no evidence that this had actually occurred.

When considering a case the PC determines whether the pursuance of further information or action is in the interest of the general public benefit in accordance with the institutions Royal Charter. It would, for example, be inappropriate for the PC to expend excessive time and money on a case that was either frivolous or vexatious.

Misconduct it seemed could be either, or illegal and professionally unethical. The most clear cut misconduct cases would be those that were both illegal and professionally unethical whilst expected Conduct would be legal and professionally ethical. This leaves decisions over those circumstances that may arise which are either professionally unethical but legal or, unusually, illegal but professionally acceptable. As Singer and Kuhse (1999) suggest, within our society the law is distinct from ethics but nonetheless relevant:

Ethics is also independent of the law in the sense that the rightness or wrongness of an act cannot be settled by its legality or illegality. Whether an act is legal or illegal may often be relevant to whether it is right or wrong because it is arguably wrong to break the law all other things being equal (Kuhse and Singer 1999 p.6)

To make sense of this relationship between ethical Conduct and the law I created a simple paradigm model below which has been informed by the work of Seedhouse (1998, p.98) who included amoral considerations. The standard meaning of amoral according to Oxford English Dictionary definition is:

Lacking a moral sense; unconcerned with the rightness or wrongness of something: an amoral attitude to sex. (Oxford English Dictionary, 2012)

Whereas Seedhouse has made a distinction between immoral actions that are intended to have consequences and amoral actions that are not intended to have consequences (Seedhouse 1998, p.92). Rather than make this distinction I have referred to ethical or unethical paradigms as appraised by the Committee as it would be impossible to know whether an action was immoral or a person was amoral as described by Seedhouse without somehow getting into the mind of the individual when the action was taken. It is only possible to observe the outcome in this context.

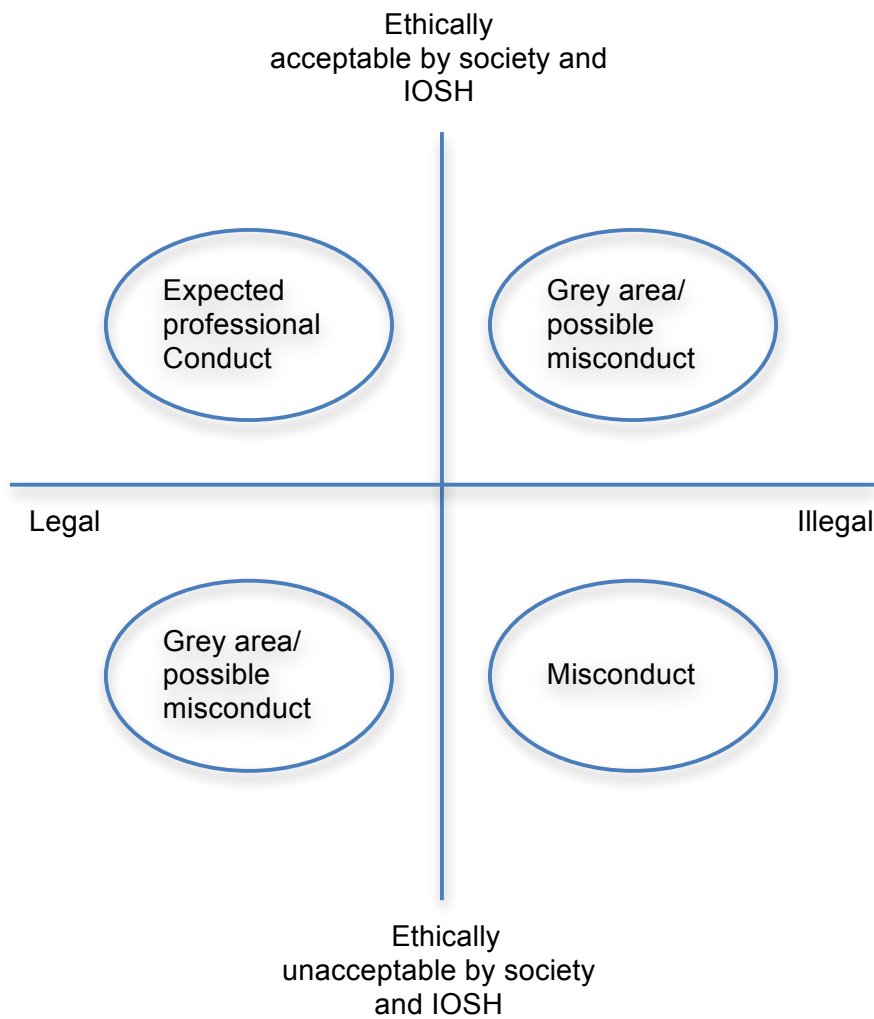


Figure 5.5: Legal/ethical Paradigm Model

The illegal and legal division was relatively obvious where the subject of the allegation had been convicted of an offence in a court. However the ethically acceptable/unacceptable division was less clear. It is conceivable and likely that there may be situations that are acceptable to society but not to IOSH. To explain each quadrant examples from the cases analysed and hypothetical scenarios discussed at the PC are discussed below under quadrant headings.

5.3.6 Legal and ethically acceptable by IOSH and Society

According to all PC members this is what is expected of members, they should be complying with the law and the ethical standards for the profession. Any deviation from this could amount to misconduct and possible sanctions.

5.3.7 Ethically acceptable by IOSH and Society but Illegal

Initially this appeared illogical to some members after all how could you break the law but still remain ethically acceptable to IOSH and society? The hypothetical situation of a member receiving a penalty for illegal parking or a minor speeding offence was discussed. The act of speeding is clearly illegal but would the Committee consider this misconduct under the existing or future Code of Conduct? The answer was a resounding no. The issue of international law was also considered where a member through ignorance of the local laws commits an illegal act that would not be considered illegal in the UK. A case illustrating this was reported by the BBC (2010) where a couple were sentenced to a month in prison for breaking Dubai's strict decency laws. Again the PC agreed that it was unlikely that this would be considered misconduct. In conclusion there was an acceptance that this may be a grey area and each case would need to be considered on its own merits with suitable guidance to aid any deliberations.

5.3.8 Legal but not ethically acceptable by IOSH or Society

This quadrant presented less of a challenge than the illegal but ethical paradigm, a significant number of cases heard by the PC were of this nature. Examples discussed included issues of honesty in the main. For example, a member who had created a false certificate claiming that they were a full member of the institution when in fact they were an associate with no formal qualification. In a further example, a member claimed to be a chartered member on a CV when they were, in fact a graduate member. Other examples focussed on member verses member disputes on individual behaviour or tone of language used. There were also a few complaints from clients on standards of service and competence that were considered. None of these were illegal activities although some were considered misconduct and

unethical. Again this could be a grey area where allegations of misconduct do not automatically amount to misconduct and each case would need to be considered on its own merit with guidance.

5.3.9 Illegal and not ethically acceptable by IOSH or society

In cases of this type there was generally no disagreement on whether misconduct had occurred. Examples discussed included cases of paedophilia and acts outraging public decency where the perpetrator had been convicted. Also a case that involved a health and safety consultant who was prosecuted under health and safety legislation for unsuitable advice was also considered clear misconduct. In discussing possible sanctions for such offences the maximum penalty of expulsion was considered appropriate in all cases of this nature.

5.3.10 Applications for the paradigm model

The legal/ethical paradigm is useful in revealing that a singular approach to viewing all actions from only a legal point of view is unsatisfactory. Ethical systems for professionals are more complex than this and therefore demand a broader perspective. The model has obvious educational and CPD applications. It may also be useful in forming guidance for new members of the Committee who may have lacked an appreciation of these complexities before joining the Committee.

5.3.11 Implication for a review of the disciplinary procedures

The initial proposal was to re-write the Code and guidance and review the disciplinary procedures making minor changes as necessary. However as the project progressed it became apparent that there needed to be more radical changes to the disciplinary procedures especially if steps were taken to decouple them from the Code and develop a separate complaints procedures, a view expressed by the EPM during this stage and later confirmed by the IOSH Solicitors during Stage 4.

The existing Byelaws placed some constraints on the PC in making changes to the disciplinary procedures. For example Byelaw 7 stipulates circumstances under which membership may be terminated, such as entering into a formal personal insolvency proceedings or are sectioned under mental health legislation (IOSH 2003, p.28). This relates back to the existing Code point 19 that requires members to notify IOSH if

certain events affecting them, such as those mentioned in Byelaw 7 occur. Membership under Byelaw 7 is terminated automatically under these circumstances and as such there is no incentive for a member to notify IOSH, of particular concern to the PC was the potential automatic termination of membership on mental health grounds that could be viewed as unlawful discrimination under more recent legislation such as the Equality Act 2010 (ACAS 2010).

In the new version of the IOSH Code explicit reference to mental health incapacity and legislation was removed to avoid unlawful discrimination, however by doing so there arose an inconsistency between the byelaws and the proposed Code. With regards to the position on bankruptcy the recommendation by the Committee was to move to a position where each insolvency case was dealt with on its individual merits. In drafting guidance to the new Code 1.3 c) the PC has in a minor way contradicted Byelaw 7 by stating:

... Insolvency may affect continued membership of the Institution. New version of Code 1.3 c) (undated, p.2)

In discussing this with the EPM in some depth it became apparent that IOSH is more inflexible and severe on personal insolvency when compared to other professions such as those included in the benchmarking. The proposal therefore was to ask the BoT after consultation with Council during Stage 4 to consider amending Byelaw 7 to bring it up to date and aligned to the proposed changes in the new IOSH Code and disciplinary procedures.

5.4 Conclusion

At this stage we achieved our first draft of the new IOSH Code with some draft guidance. The guidance gaps that remained become the focus for the next stage. It was anticipated that both the interviews on practitioners and the consultation with IOSH Council prior to final approval would make a significant contribution to the guidance.

The analysis of cases provided some useful insight into the nature of misconduct. It was useful in creating the paradigm grid in figure 5.5 which will have useful

applications in education and CPD following the launch of the new Code. By reviewing past cases it was also possible to identify some potential areas of improvement in the disciplinary procedures. In particular there was evidence that the subject of an allegation could drive the process towards a disciplinary Committee if they chose not to admit to the allegation. This resulted in many trivial cases being referred to the disciplinary Committee from the professional Committee unnecessarily at great cost. There was a requirement for a filter mechanism to ensure that only valid cases were presented to the professional Committee and a process that prevented the subject of an allegation maliciously driving the process. There were also gaps in the sanctions available to the professional and disciplinary Committees. Some consideration could be given to encourage ethical behaviours by looking at a subjects CPD record and making recommendation in this regard. The expansion of guidance against each Code point would also help when communicating outcomes from a disciplinary decision that may include reference to particular guidance in the new IOSH Code.

A complaint may not amount to an allegation of misconduct and therefore we should have some separation between the complaints and disciplinary procedures otherwise all complaint would always initiate the disciplinary procedures. By separating the IOSH Code from the disciplinary procedures it can be both regulatory in nature and also educational, hopefully making it less punitive and a more proactive document.

5.5 Reflection on Stage 2

There was significant progress during this stage in producing a completely new version of the IOSH Code and beginning the development of further guidance. The guidance would be further enhanced by the outcomes of the interviews and further consultation with both the professional Committee and IOSH Council. The analysis of cases had also prompted the professional Committee to reflect on the processes for making decisions on allegations of misconduct under the existing Code and this in turn led to a further examination of the existing disciplinary procedures. It was interesting to note that during this process I myself had reflected on leading the process of change amongst the Committee members;

I can see that members of the PC have become far more reflective on their decisions relating to allegations of misconduct. It would appear that consulting on the development of the new Code has made them critically consider their own practice as Committee members, perhaps as a way of testing out developments in the new Code. I have certainly been doing this myself.

Learning diary excerpt June 2009

As we continued to make decisions under the existing Code whilst developing a new one, the deficiencies in the existing IOSH Code became more apparent. For me this was a difficult process to manage. During one decision I actually caught myself citing a Code point from the new IOSH Code rather than the existing one. This was an unanticipated outcome of the development process and one the ethical practice manager and myself were keen to resolve. The EPM therefore took the lead in presenting allegations of misconduct being careful to include comprehensive notes that included specific Code points breached in the paper work. This was supported with decision sheets and a reminder to the Committee prior to making decisions of the relevant areas of the IOSH Code that were applicable. This process was refined during the next two years and now forms a standard part of the process.

It was during Stage 2 of the project that the true implications in terms of time became apparent. I already had a full-time position to contend with as well as volunteering as a member of the Professional Committee, of which the routine duties included reading substantial papers, attending up to six meetings a year and making decisions on allegations of misconduct. Now on top of this I was leading a review and development of the new IOSH Code of Conduct. The initial enthusiasm and momentum developed during Stage 1 began to wane in Stage 2 and it became increasingly difficult to find the time to manage the project. This extra time was not anticipated at the start of the project and it became a real issue during the course of the project over the next 2 to 3 years. The appointment of the EPM during this stage was an enormous relief and provided some much needed administrative and technical support to the review. We very quickly developed a close working relationship that allowed my continued leadership of the project as a member of the

PC with in house support and management from the Ethical Practice Manager. I did however suffer some initial anxiety concerning this appointment as noted in my learning diary:

I am feeling some anxiety concerning the recent appointment of the ethics practice manager. I hope we can work together on the project in hand... Learning diary excerpt, Feb 2009

As we developed our working relationship I discovered that my initial concerns were pessimistic:

The collaborative working is going extremely well. SB experience and technical input has been invaluable, we are in constant communication and the Code is developing rapidly. Learning diary excerpt. May 2009

Having reflected on this I can see that the initial anxiety although pessimistic was a necessary motivator in working hard in the initial stages to build a good working relationship. I can also see how I may have felt threatened at the prospect of losing control of a project that I had already invested considerable time and effort in. Additionally I also had the added risk of losing the opportunity to lead a project that was necessary for the completion of the DProf study. It could be convincingly argued that this would be a good reason to panic. In anticipation of this I created several contingency plans just in case the project leadership was transferred to the newly appointed ethical practice manager. The first was to find a role within the project that still allowed for some research opportunity that perhaps split away from but still contributed to the overall aim, such as focusing on developing the CPD on ethics. This was an early consideration for the project in any case and had developed into leading the review of the Code and guidance only after the successful appointment to the Professional Committee in 2008. The second approach would be to focus on the mechanism of the Professional Committee as it functioned to make decisions on allegations of misconduct. Again this was an early consideration in the project as a contingency if the Committee and the board of trustees did not approve the review of the IOSH Code but I had successfully been appointed. Both these fall back positions helped ease my anxiety somewhat and reminded me that no matter how fantastic

you think an idea is it may not get the full support of those around you or things may change beyond your control. As it transpired I had no reason to fall back on these contingencies as I was able to progress with the project as leader with the advantage of having additional technical support from within the Institution.

It was also apparent at this stage that we were in uncharted territory when pulling together the new IOSH Code. What appeared to be a relatively simple project at the outset was becoming a significant piece of work with significant complexity. The IOSH Board of Trustees in 2009 initially questioned the proposal to review the IOSH Code, asking whether there was evidence that it was needed. The Professional Committee responded by citing the terms of reference that required a regular review of the IOSH Code along with the evidence already gathered. We also had a discussion about change. The quote below taken from the book 'The Leopard' by Lampedusa (2007) sums up nicely the essence of that conversation. The character Trancedi is talking about the threat of a republic to his uncle the prince and says:

If we want things to stay as they are, things will have to change. Lampedusa (2007, p19)

This quote rings true for me in leading the current project. If IOSH are to remain the leading profession for health and safety profession and retain the public trust as a chartered body then they need to change. Change is necessary to maintain the *status quo* or at least the illusion of *status quo*.

Having sufficiently broad consultation on the revised Code is important, however this can lead to delays and in some cases disagreement on content. The dangers of design by Committee are well known in industry, as Sir Alec Issigonis designer of the Mini motorcar 1906-1988 is reported to have said;

A camel is a horse designed by Committee Quote attributed to Sir Alec Issigonis 1906-1988 designer of the Mini motorcar (Liebler and McConnell 2012, p293)

It is a commendable desire to have a thorough and broad consultation process on such an important document. As Sir Alec Issigonis succinctly puts it, there can be an undesirable cost to design by Committee that needs to be avoided. To reduce the likelihood of unwanted lumps and bumps a co-ordinated approach was needed to ensure some final oversight and authoring of the document. The appointment of an Ethical Practice Manager (EPM) to IOSH staff provided additional technical oversight and together through close collaboration we worked to ensure the creation of horse rather than a camel albeit through a protracted and often frustrating route.

Our attempts to reduce the IOSH Code points where possible and in some cases to statements of virtue presented unexpected problems. For example, a perfectly reasonable Code point may be that members, in the public interest, are required to be honest. However imagine a situation where lying was part of the job, but in doing so the wider public benefit was served. A common example of this could be by providing patients with a placebo as part of medical research. From my own experience I was once asked to covertly observe an electrical portable appliance tester to identify previous concerns raised by employees regarding unsafe practices. There is perhaps a conflict here between the principle of truth telling, honesty being a required virtue of the professional and the utilitarian greater good. In my experiential example evidence was required to substantiate the unsafe practice of testing electrical appliances incorrectly, to 'be honest' may have involved telling the contractor that I was there to observe his behaviour which undoubtedly would have changed the behaviour and the evidence would have been lost. The consequences of this would be that an unsafe contractor would continue to test electrical appliances incorrectly potentially exposing others to the risk of electrocution or fire. My concerns over this were noted in my diary:

I'm concerned about honesty. What about deception? I have had the experience of going undercover to look at an electrical contractor's practice. Would I be breaking the Code? Learning diary excerpt, June 2009

These reflexive concerns prompted me to look into this issue. After all there are plenty of examples where undercover work is carried out that has net benefit and is deemed acceptable to society. In the Milgram (1963) experiments deception was

seen as ethical for the purposes of the research at the time. However the Milgram experiments, although acceptable in the 1960's would be unlikely, although not impossible, to get through any ethical committee today. It would seem that the principle of honesty was more complex than the virtue of being honest would imply. Erikson (1967,p373) when writing about sociological research found deception in research unacceptable:

...it is unethical for a sociologist to deliberately misrepresent the character of the research in which he [she] is engaged. (Erikson 1967, p373)

Others have disputed this, for example Goode (1996, p11) argues against Erikson's assertion by claiming that certain kinds of deception are in fact necessary to gather certain data in certain settings. An example would be the placing of false adverts in papers to gain participation. It is likely that society would have the expectation that professionals would be honest and it therefore seems appropriate to have this in our Code in meeting these expectations. This is perhaps more relevant to IOSH as the nature of the Code is that of professional practice, rather than research ethics as with the Milgram example. This however probably over simplifies the complex nature of real world practice. For this reason I suggested that additional guidance might need to be added on this to cover deception once there was sufficient empirical evidence available to underpin it. The development of further guidance became a particular concern. I had invested a lot of faith in that the interviews of practitioners would provide numerous examples to populate missing areas. As is discussed in Stage 3, this was not necessarily the case and a more holistic approach would be needed. We had already decided that the IOSH Council would not merely be an approval mechanism but in a rather novel fashion would become part of the consultation process. It was hoped then that the guidance would be enhanced not only from the empirical interview data but also from Professional Committee and Council members during the final Stage 4 of the project. It also became apparent that the guidance was not going to be a final document. Guidance would develop and evolve as more experience was captured over time, as I noted in my learning diary at the time;

The guidance has been difficult; it could go on forever if we are not careful. I need to build in the capacity for the Committee to update the guidance as new cases come up and inform us. There have also been questions about additional guidance for the Committee in how to interpret the Code. Learning diary Excerpt July 2009

The strategy therefore was to encourage the Committee to reflect on their own experiences and that of case they had reviewed to help inform the guidance. Additionally this was used to underpin the case studies developed in Stage 4 that were used as part of the strategy to engage Council members prior to approval. I discussed this at length with the Ethical Practice Manager, which I noted at the time;

Discussions with EPM suggest that we will be able to make additional guidance as and when needed. Also there is room to expand on this through CPD, case studies on the intranet etc, which fits with the original plan at the conception of the project. It would be better to keep the Code guidance as pertinent as possible, still need to have guidance for every point though... Learning diary Excerpt Nov 2009

The idea of having numerous case studies in addition to specific guidance in the Code was further reinforced when the opportunity to become a Lay member¹⁵ on the Committee of the Chartered Institute of Securities and Investment (CISI) was referred onto me by the Ethical Practice Manager. This led to a training day at CISI in which we became familiar with their Code and disciplinary processes. The training was extremely useful and provided an interesting further benchmark from which to work to. Of particular interest was the 24 ethical case studies published on their web site addressing misconduct cases and what was termed grey areas of practice. This helped to reaffirm my commitment to expanding our guidance to case studies that could then be used for education and CPD purposes in the future to assist in making the Code a more proactive document.

¹⁵ Lay in this context is defined in the Oxford English Dictionary as meaning not having professional qualifications or expert knowledge.

CHAPTER SIX – STAGE 3: SEMI-STRUCTURED INTERVIEWS ON HEALTH & SAFETY PRACTITIONERS

6.1 Plan

The plan involved firstly establishing core themes for the interviews. The themes emerged through a combination of discussions with the Committee and piloting interviews. These are listed below:

1. Understanding of ethics, Codes of Conduct, professional behaviours.
2. Experience of the Code or breaches of the Code in practice
3. Examples of ethical dilemmas in practice (not necessarily amounting to a breach of the Code)
4. Support mechanisms and guidance available for practitioners
5. Ethical education
6. Drivers for health and safety e.g. moral, legal and economic and their priorities
7. Discussion on penalties
8. Discussion on criminal activity seen as incompatible with the profession
9. Methods of dissemination for the Code
10. Other impacts on the profession e.g. negative media, Lord Young's review.

The aim of the pilots was to establish the likely time taken for the interviews, develop the interview style and test out the established themes. The average interview time was 45 minutes. All interviews were recorded and transcribed. To ensure anonymity of the participants they have been referred to using alternative names that represent their gender only.

6.2 Action

Interview participants were selected as previously described in the methodology in Chapter 3. A total of 15 practitioners were selected to participate, representing a range of industries, experience and IOSH membership levels. Participants were contacted by email in the first instance, followed up with a phone call to make the arrangements to meet at a suitable location.

Locations varied from the participant's own place of work, a meeting venue and the University campus. In all locations quiet meeting rooms were used where there was little risk of disturbance or confidentiality issues. All participants were provided with a participant's observation sheet prior to the interview and signed a consent form before commencing the interview with the opportunity to ask any questions provided. Interviews were recorded using a standard digital recording device that was made obvious to the participants.

6.2.1 Summary of the Pilot Study

To test out the interview approach and make any necessary adjustments a series of pilot interviews was undertaken. This provided useful information on issues such as how long the interviews would take, impact of various methods of recording, rehearsing of questions, preliminaries and closing the interviews.

I had concern that the use of digital recording equipment used for the interviews would be a distraction or make interviewees more guarded in their responses. The digital recorder once switch on was a focus of attention for about two minutes after which all participants in the pilot study soon forgot it was there. After the interviews I discussed the use of a digital recorder with the participants who were relatively relaxed about it, especially as all the participants were professionals who had had prior experience of taped interviews. A minor point that became apparent was the additional noise, such as shuffling papers, taping pens and external noise picked up by the microphone that could make transcription difficult. Two of the pilot interviews were recorded by note taking and digital recording. This allowed a comparison to be made between the two techniques in terms of information and impact on time. Predictably the note taking lengthened the interviews by almost 20% and much of the information was not recorded in the notes when compared with the transcription some of which was very relevant.

The length of the interviews ranged from thirty-five minutes to an hour, with an hour seeming to be the limit of both the interviewer and interviewees' useful contribution. The themes for the questions were also tested and in most cases these themes began to develop intuitively through discussion during the interview process,

sometimes out of order than originally planned. By having the themed areas available I was able to check that they had been covered and make a few notes to remind me to go back to an area if I wanted to probe further. The use of the digital recorder made this possible by allowing me to concentrate on noting additional questions as required rather than trying to capture all that was being said.

Some additions to the themes were made, in particular participants were keen to discuss the negative media attention on health and safety and this prompted me to explicitly discuss this along with the legal, economic and moral justification for health and safety. As was implied by the Professional Committee at the start of the project, it was felt that knowledge of the specifics in the existing Code of Conduct among members was weak. This was certainly apparent during the pilot study. Although it was not an objective to test out this hypothesis statistically it was useful to have some evidence for this. The approach was to avoid asking knowledge based questions on the specifics of the existing Code and opt for more searching questions to gain insight and depth.

6.3 Observations

6.3.1 Introduction

The interviews were recorded and then transcribed. Transcriptions were analysed using a computer assisted qualitative data analysis software (CAQDAS) programme specifically designed for the Mac called Hyper Research. The CAQDAS software assisted with the content analysis by organising, categorising and synthesis of the transcription. This not only saved time but also created a record of the analysis that could be re-examined and refined to identify emerging themes through examples of qualitative responses given. The transcripts were not quantitatively analysed as such however it was evident that competence as a theme was frequently mentioned across the majority of areas explored during the interviews. Quotations from a range of interview participants are provided under each themed heading along with an evaluative discussion. To ensure that a reasonable range of participants was used an interview grid was created which is attached at appendix G.

6.3.2 What is ethics?

Interview participants were first asked to explain in their own words their understanding of ethics as a concept. Ben framed ethics within a duty of care context that is commonly understood concept in health and safety.

I suppose without getting too hung up on philosophy, I guess that I see ethics and ethical considerations really under the banner of duty of care. It's this moral Code of what's right and what's wrong that governs the way most people behave, either to others or where we have a responsibility to them and could be held to account. I suspect that it's an individual thing.(Ben, interview participant)

The last comment, that Ben suspects ethics to be an individual thing was interesting in that there was no mention of the professional Code of Conduct in this context. Although Ben did mention being aware of the Code later there was little knowledge of its contents. The link between the professional Code of Conduct and ethics as a duty of care concept is not clear. Laura however related it to the profession more explicitly and was more directly connected to the ideals of professional Codes of Conduct and the law.

To me it's just really standards of acceptable behaviour that you have some rules and guidelines that everybody within a particular profession understands and operates within. So it's like laws or whatever, it sets the boundaries that we all operate to, to kind of try and make sure there's no misunderstanding really.(Laura, interview participant)

As discussed, Gardner (2009, p18-19) argues that the law is not always moral, although it can act as a moral guide. The reliance on rules for moral guidance may be inadequate when considering the complexities of practice. As Dancy (2004, p2) points out a strict adherence to principles may actually distort the decision-making process possibly resulting in unethical outcomes.

The distinction between Codes of Conduct and ethics was referred to infrequently. Stephen however, made this distinction by discussing informal rules, alluding to a personal ethic. He made a connection between his personal ethic and religious convictions.

Ethics, a set of belief values, basically rules of Conduct, can be written, like CIEH, IOSH, the occupational hygiene ones, the Occupational Hygiene Society, the American ones. Or it can actually be an informal set of rules as well on personal behaviour, religion being a source of ethics as well as other things.(Stephen, interview participant)

Stephen's distinction between rules of conduct and an informal set of rules perhaps being influenced by religion is revealing. There was no indication that there would be any conflict between the formal or informal rules. In Shane's interview the distinction between informal and formal rules of conduct was also mentioned and did not elude to any conflict between the two either. Shane saw both as achieving a similar goal however there was some discussion about the transient nature of ethics.

It's about what the culture says is the moral of the day and if you like the issue of me as being an older person, you met a woman or girl, you got engaged, you got married. That was the moral. Now you meet, you shack up together and may or may not get married. And society doesn't matter about that, whereas our society back then it was a big matter.(Shane, interview participant)

Shane has articulated a form of moral cultural relativism that is time dependent. What is moral today may not have been moral in the past, arguably the opposite could also be true, what was morally acceptable in the past such as children cleaning chimneys would not be morally acceptable today. This would imply that cultural morals change over time but are not always perceived as progressive. Donaldson (1996, p.49) and De George (1993, p.15) both reject the two extreme approaches of what is referred to as cultural relativism and ethical imperialism. Cultural relativism would take the position that no culture's ethics are better than any others, there are no absolute rights or wrongs. At the other extreme, ethical imperialism would take the position that

one culture's morals are superior to another and individuals would be encouraged to act exactly as they do at home. De George writing in the context of American business calls this the righteous American position. IOSH as an international body would need to consider the implications of either extreme when implementing the Code.

Malcolm made links to professionalism and competence through concepts such as fairness and integrity.

For me it means fairness, first of all fairness and professional integrity. And when you talk about professional integrity you are looking at providing the best advice, recognising your limits in what you do, and also seeking advice. Being fair means a lot of things being fair with people, giving the right advice fairly, acknowledging your limitation, which also has to be spoken as a professional. (Malcolm, interview participant)

Fairness is often used in legal terms to indicate equity in justice without bias. Malcolm tempers this with an acknowledgement of his own limitations of competence. This insight is likely to be drawn from the definitions of competence widely used in health and safety literature for example in case law competence is defined as:

One who is a practical and reasonable man who knows what to look for and how to recognise it when he sees it. (IOSH 2005, p5)

The implication being that a competent person would conversely know when they were not competent and therefore not undertake work that they became aware they were not competent to do. Malcolm describes this as acknowledging your limitation as a professional and linking this to professional integrity.

There was considerable vagueness about ethics, perhaps indicating a general lack of awareness. Alison for example struggled with providing any explanation and eventually described ethics as:

...a health and safety professional going about fulfilling your role as professionally as possible. (Alison, interview participant)

When pressed on what 'as professional as possible' would mean in practice there was a tendency to fixate on getting things technically correct rather than eluding to any ethical issues.

6.3.3 Value of the Code of Conduct

After exploring the meaning of the term ethics we progressed to looking specifically at the Code of Conduct. There was a limited range of knowledge of the existing Code. Much of this knowledge seemed restricted to its existence rather than its content. Tony for example explained away his lack of knowledge of the Code by stating:

I haven't had any needs to refer to our Codes of Conduct in the last twenty years that I have been working in the industry. (Tony, interview participant)

Tony expressed this with some pride but did not expand further when asked why this was so. The implications being perhaps that Tony felt he intuitively knew how to practice and therefore never needed to refer to the Code. An alternative could be that he had never done anything wrong and therefore had no need for the Code seeing it as a disciplinary document rather than guidance. This could be analogous to a health and safety problem arising in practice that prompts the practitioner to refer to a particular piece of legislation only when there is fear that it has been breached. Had Tony admitted to never referring to any health and safety legislation in twenty years of practice his professional competence may be called into question. Whereas to admit to never referring to the professional Code of Conduct and guidance, does not appear to have the same implications on the level of competence. Tony, rather than see this as a gap in his professionalism, made this statement as a way of saying I am an ethical practitioner, I intuitively know how to act professionally and therefore do not need to refer to the Code. There may also be a rationale that by declaring this is to say I have never done anything wrong and therefore it is not relevant to me. When

pressed on this issue Tony did not expand further although when pressed on the value of professional bodies having a Code Tony did acknowledge its worth:

But in general I can see the value of having a Code of Conduct but I think it is something which, particularly for an industry which has some vocational element to it, which I think is...to varying degrees its individual but there is a significant vocation element to it. And I think a Code of Conduct helps structure that.(Tony, interview participant)

The vocational nature of the health and safety profession was clearly important here. The implied message being that the Code should represent practice, in other words it must be relevant to the real world perhaps. Tony went further to explain why he felt a Code of Conduct was necessary even though he hadn't referred to it by saying:

...and I think a professional organisation with a Code of practice structure behind it is something which helps towards providing that credibility.(Tony, interview participant)

With the knowledge that IOSH has a Code of Conduct Tony was it would seem getting professional credibility vicariously without the need to know its contents. In defending this position Tony is implying that his Conduct has always been suitable for the environment he has worked in and it is therefore his experiential learning that underpins his perceived good Conduct and not the document provided by IOSH. Tony was educated to Diploma level, which at the time did not contain any requirement for professional ethics to be taught. The membership structure at the time also had no requirement built into it to require Tony to acknowledge the Code in any way. Both these deficiencies have now been resolved. Ethics is now included in the 2010 syllabus and following the award of the Royal Charter in 2005, members now must acknowledge the Code when being awarded Chartered membership. There is however a gap remaining for those who transferred to this category of membership that may explain Tony's ignorance.

Bill was quite honest in his admission that he too had not referred to the Code in sometime. Only recently due to a project involving CPD did Bill feel the need to look

at it, knowing intuitively perhaps that competence and professional development was covered somewhere in the Code:

I'll be telling lies if I haven't read it recently, because obviously I've undertaken my own study. And I think Reg 4 or Code 4 is undertaken in CPD, so from that perspective yes, I have read it recently and the updated version. But I've got to be honest, probably before that, the last time I looked at it was oh, probably ten or fifteen years ago and I don't even suspect, if the website was there, it would have been on the website. It was probably in my little book I got when I got my diploma. So I think I'd have to be frank and say I've only read it in the last six months because of what I'm doing, and not because of any other reason. So I'm not convinced maybe that's right, but it's probably like if you're in an organisation, the only reason we've come across the safety policy is because we're updating and reviewing it, it tends to just sit there in the background ticking over. (Bill, interview participant)

Bill makes an interesting analogy between the Code and the Health and Safety policy. Documents that are necessary to have but that are infrequently referred to unless something happens. This raises the question of what is the Code for. Is it a regulatory document only used to punish individuals when things go wrong or is it an educational document representing the professional ideal in terms of ethics and Conduct that provides a useful source of information? The current Code it would seem is not the latter. Although not everyone was ignorant of the Code, Laura explained what had prompted her to engage with the contents:

I read through the IOSH Code of Conduct several times when I set up in business, particularly because I say I comply with it, and I did read it at that time. But if you ask me now what does it say, I couldn't quote it verbatim. But I think I have a good idea of what's expected of me in terms of my behaviour, and I don't think there's anything... I hope there is nothing in there that I don't comply with. So I think because the IOSH Code of Conduct, as I remember it, is quite general, it's not very specific. (Laura, interview participant)

This reveals a clear motivation to engage with the Code that does not involve actual misconduct. There is an obvious business incentive to declare ones adherence to a Code of Conduct that in turn has, in this case, prompted Laura to review it. On reflection Laura recalls the Code to be quite general and not very memorable. When pressed, Laura was unable to articulate any particular Code although competence and integrity were mentioned.

The relationship of the Code to societal expectation was loosely discussed by some of the participants. Shane for example stated that:

I think that [Code of Conduct] it is a bit different because that's rather than society saying what the morals should be, its more what a profession should stand for and how it's seen, does that make sense?(Shane, interview participant)

This distinction between societal and that of professional expectations is interesting in that it implies that the professional has an obligation to declare its moral values to society. Shane did not go as far as putting professional morals above societal ones, although it clearly indicates that the professional image is an important advantage of having a Code. Tony was the only participant to discuss the Code as it related not only to him but also to followers.

I think the components are alright the way it came across was difficult to relate to what I am doing day to day and how I could use that as a means of helping to manage and develop the people who work with me.(Tony, interview participant)

Tony had concern over the guidance in the Code in addition to how the Code related to his management responsibilities. The components mentioned where not expanded on perhaps indicating that these were not well known.

6.3.4 Who are the obligations owed to?

Friedman et al (2002, p.45) discusses issues relating to obligations to stakeholders and concludes that having clear obligations forms an important element of any Code of Conduct. According to Friedman stakeholders can include the public, clients, employer or employees, the professional body or other members. For the health and safety professional there may be additional obligations to the enforcement authorities. There is also the possibility of conflict with their obligations to the client, employer or employees. This in turn could lead to an internal conflict with the health and safety professionals' virtue of justice as described in the example provided by Laura below.

I did an auditing course, the BSI auditing course recently, and this was an issue that was raised. If you see something, which is a clear breach of legislation, what is your role as an auditor? Well, if you've been hired as a consultant, in my mind your obligation is to your client and therefore you have to advise your client. There is an obligation on you professionally and morally to make sure that you do that very clearly. So if there is somewhere where someone's going to have an accident, you need to do that urgently, you need to make sure it's very clear. So you have obligations there, but the obligation is to the client. Because some people were saying, well, perhaps you should phone up the HSE, or stuff like this. And of course then it's like well, the client is paying you, they're not going to be very happy if you go and phone up the HSE and say, there's a breach of legislation, because you come across breaches of legislation all the time as a consultant, you're always seeing things. And your job there is to advise a client that they could be in trouble here.(Laura, interview participant)

Laura has rationalised that her obligation is to her client in this example but the ethical conflict is clear. In another example Malcolm exemplified how his professional integrity meant that his first loyalty was to the company, however there was also in his view a secondary loyalty to the enforcement authorities.

Professional integrity [is about] being loyal to the company and dealing with the issue in house, but also professional integrity [is about] reporting any unsafe situations or dangerous situations to the HSE.

I would use the opportunity to use my knowledge skills and training and persuade senior management to deal with the situation on site and resolve the situation in a very positive way rather than whistle blowing. I think that whistle blowing is a last resort and yes no doubt I would do it. (Malcolm, interview participant)

Malcolm resolves this potential conflict by prioritising in a logical way that his primary duty as a professional was to seek resolution with the company management first before considering the whistle-blowing option, however he does not discount it outright, rather seeing it as a last resort option to ensure the implied obligation to the employees and others who may be adversely affected by the work activity. Alison articulated how she felt her employer viewed her obligations.

My line management will probably say that I should do it for the organisation. And in fact I know that's what I have been told in the past, that I am here to save somebody's bacon, not necessarily somebody's life. Which is not one and the same thing. (Alison, interview participant)

Alison went on to discuss the conflict she felt between meeting her employers obligations and her own moral motivations to protect the employees. Most of the time this was a compatible situation but the threat of a conflict clearly troubled her. Ethical issues in health and safety are much more complex than perhaps members are consciously aware of. They can be influenced by perceived conflicts between benefices such as incongruence between obligations owed to employer and employee. In the majority of professions the ethical contract is clearly between the professional and a client e.g. doctor to patient or lawyer to client (Koehn 1994). In health and safety the contract is more complex in most cases and could be 3 ways involving the employer, employees and enforcement authorities.

6.3.5 Being a Health and Safety Professional

There was frequent mention of the issues that related to the role and some frustrations of the health and safety professional. Robert expressed his view of the role in terms of frustration:

...it can be frustration because you can see what needs to be done but can't always achieve things. (Robert, interview participant)

Robert gave an example of concerns he raised over waste collection techniques that were initially ignored but eventually got some attention only after numerous injuries:

It was very intensive with a lot of injuries and I got very passionate about it. It took me three years but eventually...after three years we had enough records to prove it, we managed to get the Council to invest nearly a million pounds to change the whole system. So we no longer do kerb side collections, the noise levels are reduced, there are less injuries, very few boxes are now used because it's all... so that side is brilliant but three years of frustration but two months of yes, finally. (Robert, interview participant)

It is perhaps not uncommon for health and safety professionals to meet some resistance when making recommendations. It is also not uncommon for organisations to only react when accident data points to a problem in risk control measures. The interesting aspect of this is the ethical implications that emerge. Issues such as, whistle blowing if your opinion is not listened to, obligations to the health and safety of employees over riding obligations to the employer and their broader objectives. Hypothetically what if by spending a million pounds on improving this system of work left other areas inadequately funded perhaps with higher accident potential as a result. The ethical landscape may appear straightforward to the health and safety professional at a micro level however things get more complex when looking at issues from a macro perspective. A win in one area could mean a loss in another. It raises perhaps conflict between a resolute adherence to deontological principles and a more consequentialist approach to maximise utility. In addition to reduced injuries Robert does include additional benefits for the additional spend.

Alison explained that health and safety for her was not about popularity but about getting things done:

...people don't go into health and safety to be liked, because a lot of people don't like what you have to say. Because you are pointing other people in the direction of what their own responsibilities and accountabilities are, and a lot of managers and staff don't think that it has anything to do with them.(Alison, interview participant)

There is perhaps a problem here of titles. For example nurses do nursing, surveyors do surveying but health and safety professionals do not necessarily do health and safety. Health and safety is arguably everyone's responsibility and the duties in legislation are with primarily the employer and secondary with the employees. Most professions have a professional pledge. Koehn (1994) in discussing professional ethics makes a number of interesting points about maintaining public trust and confidence. Koehn explains that traditional professions often have a public pledge such as in the legal profession there is a universal pledge to uphold the law. By having a pledge public trust and confidence is secured. A profession without a public pledge may not be clearly understood by the public and therefore public trust and confidence may be less certain. Koehn does however caution that public pledges can limit the professional activity in some cases. IOSH does not have a public pledge, although it does have a vision:

A world of work which is safe, healthy and sustainable.(IOSH 2010)

The vision does not include beneficiaries and is quite broad. As the health and safety professional is not totally responsible for the workplace the vision would be an unrealistic pledge for a member to make, it could be tempered with the phrase 'positively contribute to a world of work which is' although this seems a bit nebulous. So what would our public pledge be? To provide competent health and safety advice or assist employers in the provision of a safe and healthy workplace, so far as is reasonably practicable, quite long perhaps. Koehn (1994) provides five common traits of the professions:

1. Are licensed by the state to perform a certain act;
2. Belong to an organisation of similarly enfranchised agents who promulgate standards and/or ideals of behaviour and who discipline one another for breaching these standards;
3. Possess so-called esoteric knowledge or skills not shared by other members of the community;
4. Exercise autonomy over their work, work which is not well understood by the larger community;
5. Publicly pledge themselves to render assistance to those in need and as a consequence have special responsibilities or duties not incumbent upon others who have not made this pledge.

The health and safety profession satisfy three of the traits. Health and safety is not a licensable or regulated profession such as Law or Medicine and there is no public pledge as such although arguably the vision may serve this purpose to some extent. Koehn indicates that the last trait is often the most controversial but is also the most defensible. Although a short and snappy pledge may not be possible, it would be appropriate to use the opening statements in the new Code as a form of public pledge to capture the professional activity and go some way to securing public trust and confidence. Alison then went on to explain how others do not often perceive health and safety professionals as professionals in the workplace:

Most people think professionals are somebody like a doctor or like a lawyers or senior education like a professor, senior managers, and directors. A lot of people don't consider someone like a health and safety person as a professional. (Alison, interview participant)

This is an interesting point that certainly demands further research to ascertain whether this is a widely held view by health and safety professionals, employers and members of the public. Bill made a similar point concerning recognition as a professional and added that there was a lack of appreciation of the educational and experiential requirements to become a chartered member of the Institution:

They don't actually appreciate what it takes to get to that stage. They don't appreciate how long it takes as it's not just your [education] it's your experience. (Bill, interview participant)

There is some indication here from Bill that experience is more significant than qualifications in professional competence. There is clearly some concern over professional identity and this will need to be considered in the new Code document. It should perhaps form part of a wider strategy for IOSH to ensure that a positive message concerning health and safety professions is reinforced when the Code is launched, picking up on the second trait identified by Koehn.

6.3.6 Examples of ethical Dilemmas or Issues

Most participants struggled in providing clear examples. There was some confusion as to what may constitute unethical behaviour, dilemmas or issues beyond the obvious law breaking activities of murder or theft. Laura drew on her own experience to expand on what she considered unethical behaviour:

...unprofessional behaviour would be exploiting confidentiality. So if there is something that you're told in relation to your work, because obviously we do deal with quite a lot of sensitive issues, maybe very personal, like health issues or it might be more organisational, competitive type information. If you then, even in a conversation perhaps at a party or something, to divulge that information, I think really so it's identifiable with that organisation or that individual, I think that is an example of ethics and not being professional. I think also coming from a consultancy point of view, There's issues like over-selling health and safety. So telling people that they need something legally because the law says they do when they don't; and I think that's a big issue at the moment. There's lots of people out there saying, 'the law says you've got to do this, the law says you've got to do that, you need to pay for this service,' when actually the law doesn't say that at all. So I think that's another example. (Laura, interview participant)

The recognition that confidentiality was an ethical issue and that breaching confidentiality would be unprofessional is clear, although there was no acknowledgement that this was in the current Code. Laura then went on to identify what she considered common practice amongst consultants of over selling their services on the back of a legal requirement when in fact this requirement does not exist. This was identified as a potential issue in the Young (2010) report that was critical of the level of competence of consultants. This in turn has led to the creation of the consultants register by the HSE as a form of quasi-regulation. Ben rather than reflecting on his own practice, considered the employers unethical practice:

I've seen managers work in unethical ways, and by that I mean their overall objectives don't take account of basic human protection principles. So, for instance, they will undermine people or they will work in a devious, perhaps quite underhanded way to get where they want to get to, but there's something unethical about that practice. (Ben, interview participant)

Ben was concerned that routine business drivers were at the expense of what he referred to as “*basic human protection principles*”. The implied conflict here is between his professional ethic of protecting employees against accidents and the employers desire for profit. The profit against safety debate is an old one and it is easy to see how conflict can arise here. The question is whether the employer is unethical in not taking into account the human protection principles. Is this a rational approach to risk management in which some risk is accepted to ensure the organisation stays profitable and everyone has a job? This is perhaps evidence of a conflict between principles and utilitarian approaches. Another perspective could be to see Ben as having unique knowledge and insight into accident potential that the employer is unaware of hence their apparent lack of thought when it comes to human protection principles. This feeling of conflict between employers and professional principles was common. Alison talked of ignoring situations and feeling compromised in doing so:

I do feel I have had to compromise so far in I have had no choice but to ignore situations that I feel are fairly high risk to other people because there isn't the will to ensure that something is done about it. I do feel that I am compromising

my own ethics and moral Code by not being able to get any further to progress with something. (Alison, interview participant)

Interestingly Alison felt that she was compromising her own ethical Code and not that of the profession. The indications here are perhaps that Alison was not aware of the Code of Conduct and did not recognise it as an ethical document. Tony alluded to similar experiences and resolved this by transferring the ethical responsibility to the highest level available:

There have been situations where I haven't been satisfied that we put the full range of requirements in, that we haven't put all the controls in that we should do and I have probably ducked the question and escalated it to the managing director "we have done this but we haven't done that, my recommendation would be that we need to do this, it's your decision buster". And that doesn't sit comfortably. (Tony, interview participant)

Despite taking this action Tony still felt uncomfortable and explained this by saying that as a professional he felt he should have ownership of the issues and retained responsibility for resolving it. This is in contrast to the actual legal position where the employer has a clear legal duty to ensure the health, safety and welfare of employees. The health and safety professional's role is to provide competent advice on these matters. This however can, it would seem, lead to some ethical conflict where the professional has little confidence that the correct decision will be taken. Rebecca resolved this conflict by clearly stating that the responsibility fell to the employer:

...at the end of the day it is up to the organisation to take the risk. We can advise them, we can say what our opinion is and we can tell them what best practice is in the field and what all their competitors do, but if they don't want to spend the money then that's their choice. They can't delegate that responsibility to us. (Rebecca, interview participant)

This awareness of the commercial realities of business is likely born out of experience. A highly experienced professional would be confident in articulating this

to an employer whereas an inexperienced person may these responsibilities to be retained resulting in uncomfortable feelings. This may be a simplistic view that does not acknowledge the complexities of real world practice. Laura articulates a more complex situation that she found herself in that led to uncomfortable feelings, despite being an experienced professional.

...one example that sticks very much in my mind in terms of dilemmas was one that I was faced with very early on in my health and safety career, in that I was working for an authority, I was just training up as a health and safety advisor, so I was doing a dual role, enforcement, health and safety advisor. And there was a drowning in a local leisure pool and I was asked to investigate it. (Laura, interview participant)

Laura went on to explain the nature of the accident after which she focused on the ethical issues that arose:

...and there were a number of issues that came out of that investigation. 1) witnesses' names and addresses were withheld from me, and as I carried out the investigation, there were a lot of things that were wrong. And therefore I prepared a report with some recommendations about enforcement action. But what I hadn't been told when I was doing all of this was that a number of Councillors from the authority sat on the Board of the Trustees. And basically the Directors of the Council were trying to get me to change my report. I refused but I was only a small fry in a local authority at that time, and it came to a point where I left, I left the authority. (Laura, interview participant)

Laura clearly felt that being asked to change a report was compromising her professional integrity. This could also be interpreted as an issue of honesty. This was to Laura a dilemma in which she was left with two choices neither of them very good. Laura resolved the conflict by resigning in order to keep her professional integrity. Fortunately Laura was able to find another job however the situation would have been more serious if Laura's prospects for a new job were limited and she had bills to pay. This may have altered her course of action. In cases such as these support mechanisms are essential in assisting and equipping professionals with the right

approach in such circumstances. Alistair reflected on a situation in which he came across what he considered the unethical practices of another:

He had done an assessment on a particular individual who was working as cleaner, which ultimately cost her, her job. When I reassessed her as part of a reassessment team because she appealed the decision, the decisions that he had taken to condemn this person, if that's the way you word it, was completely and utterly ridiculous. Maybe influenced by the fact that he had lots of personal problems himself. But I don't even know if that was the main reason. I think he was just... he wasn't a very ethical person... It boiled down to the woman couldn't see without glasses, when she was risk assessed for her suitability for the job, she was risk assessed without her glasses on and couldn't read the chemicals she was using and it stemmed from that.(Alistair, interview participant)

Alistair is making some judgements here on the virtue character of the assessor in question. As Hursthouse (2010, s2) explains, virtues are character traits that are a disposition entrenched in the possessor. How they become entrenched is a subject of debate however experiential learning is thought to play an important part (Hursthouse 2010, Oakley and Cocking 2001). It is difficult to know whether this action was a vindictive act, a result of incompetence or complete lack of professional integrity. It may have been a naive adherence to process that had unintended outcomes, what is sometimes called a 'jobs worth' approach. This blind following of procedure with undesirable outcomes may be viewed as unethical from the outside but for a person carrying out the procedure it could be seen as loyalty or correctness. The desire to do things correctly is therefore overriding any ethical considerations. This may be a type of regulative ideal as described by Oakley and Cocking (2001, p.25) where the person has internalised a sense of correctness or excellence. A broader more pragmatic ethic is necessary in such situations to avoid the inevitable, health and safety gone mad label popular in the media. In achieving a more pragmatic approach further CPD on ethics to improve ethical competence is probably required, as Friedman (2006, p.2) points out ethical competence is different to general competence. Toby considered the dilemma of working in an organisation where there was some incongruence in priorities.

I worked as a consultant for a large global IT company, it was an interesting one for me and I don't know... is it ethics? They very much wanted us to solely concentrate on things such as ergonomics and DSE (Display screen equipment) but to the detriment to everything else and they didn't really understand UK law, and the fact that we needed to have safety management systems and policies and things like that. It was very much ergonomics and employee centric, which has got some rationale and actually I didn't win that battle and that's one of the core reasons that I left after about 8 months, probably based on my own ethical stance. I could not do just what they wanted me to do as a competent practitioner because I felt like I needed to do more and to make sure that they were safe. So I think that was probably a ethical decision. (Toby, interview participant)

Toby's professional integrity was perhaps compromised due to this conflict. It does raise the question of whether leaving the organisation has made it less safe now that Toby is not there. Or would Toby leaving make the organisation realise their mistake and adjust their priorities when recruiting a replacement. It also reveals the complex nature of the professional activity covering various hazards areas. The HSE have advocated a risk-based approach to determining the hazards that require attention (HSE, 2012). Organisations that do not adopt this approach can find it difficult to prioritise and take a compliance approach where all legal requirements are satisfied with equal measure. The third approach could be based on compensation claims liability and in an organisation with lots of computer users there could be lots of claims for ergonomic type injuries such as the one described by Toby. The conflict between realised risks from accidents and incidents and potential risks is a common one. The health and safety professional could easily find themselves in potential conflict, knowing that the priorities should be different and finding it challenging to have their voice heard, as a moral agent this would be difficult to resolve.

Honesty was a theme that emerged with most participants feeling that honesty and integrity were the most important defining features of a health and safety professional next to competence. Rebecca provided an example of where she had come across dishonesty:

I have been in situations quite a long time ago where someone wanted to apply for membership of a professional society and I had my suspicions that they had faked research results, and I raised it with them and it was denied in spades and I wasn't comfortable with the situation. But I also wasn't comfortable with doing anything about it because I didn't actually have the evidence, and obviously you can trash someone's career if you start making those sorts of allegations. So I didn't take it any further but I was uncomfortable about not having raised it to that professional affairs board.
(Rebecca, interview participant)

There have been several allegations of misconduct received by the Professional Committee regarding issues similar to these. The motivation is clearly often to obtain a job that requires a certain level of membership or a consultant wanting to portray themselves as more competent than they actually are to win a contract. IOSH has implemented a system to allow employers and recruitment companies to check membership over the phone. The Professional Committee has issued sanctions amounting to reprimands but have never dismissed someone for this breach. Bill provided an example of where he had exaggerated the risk to get something done and reflects on whether this was an ethical issue:

Over-egging stuff I've done myself, I've got to be honest. Trying to better welfare, and in this case PPE, for some workers, and overselling it to employers. Actually trying to justify on the basis that if they don't do this, this is going to happen. And I suppose if you're being technical about it, I was lying, but I felt I was lying in the right fashion, that I was doing the right thing. I know it was wrong, but I wanted these people to get the protection they deserved, and there was no other way I could do it without twisting the manager's arm up his back. I take no pleasure in that, in that I know that I oversold it.(Bill, interview participant)

This is perhaps an example of consequentialist thinking rather than abiding by a principle. Bill has resolved that lying is acceptable under these circumstances for the greater good. Others may disagree claiming that to be dishonest is never acceptable.

The issue of honesty and deception has already been discussed and this raises another question over the application of a truth telling virtue in the Code. The Committee are keen to see a requirement for members to be honest in the new Code and deal with exceptions to the rule individually on the relative merits. Lichtenberg (1996, p.21) cautions against blind obedience to Codes implying that they cannot possibly cover all circumstances encountered in practice. Ethical competence is needed when making such decisions, especially in defending an action that may go against the Code of Conduct.

6.3.7 Competence

Participants used the word 'competence' frequently during the interviews. It is not surprising given the campaigns IOSH has run in the past. A previous slogan on the IOSH website was 'Competent to the Core' and IOSH have run research seminars on the subject to inform IOSH policy (IOSH 2004). There has also perhaps been a struggle for the profession in getting recognition for qualifications at the right level. As Sir Alan Langlands in his report, Gateways to the Profession states, professions are:

...those occupations where a first degree followed by a period of further study or professional training is the normal entry route and where there is a professional body overseeing standards of entry to the profession (Langlands 2005)

Although as Spada (2009,p.3) point out not all professionals have first degrees. Health and Safety professionals typically enter the profession as a career of second choice and therefore traditionally have completed a professional diploma as a mature student to gain the appropriate membership. There has been a proliferation of postgraduate degrees over the last 20 years to capture this market and more recently a number of undergraduate degrees as well. The awareness of one's level of competence is an important feature of actually being competent. As John describes below, not being competent can lead to drastic outcomes:

There was one company that I left. I left because; partly because I hated working there but mainly because I didn't feel that I was competent to do the

job. It was in the rail sector, I had some experience in rail but I didn't have the full in-depth knowledge, and I was put into a frontline operational construction role, safety role within the rail industry. It was the only decision I had at the time to join them but I don't think I was the right person to join them and it didn't last long, about 8 months. And part of the reason I left was that I felt very uncomfortable that I couldn't fulfil that industry specialism in the organisation. I hadn't thought about it in the way as an ethical issue but I suppose you could interpret it as an ethical one, because I recognised that my competence was not the right competence for the role therefore there was a mismatch and I recognised it. (John, interview participant)

John was clearly conscious of his competence limitations at the time and has now gone on to become a senior health and safety professional. This conscious awareness has undoubtedly served him well as he has progressed in his career. John admits to being unaware of this as an ethical issue or of it being a Code point in the existing Code of Conduct. It also captures the complex nature of health and safety practice and the diverse requirements in terms of knowledge from industry to industry. There is an existing Conduct requirement for members to complete and record CPD to maintain their membership, although there are questions of the level of compliance¹⁶.

6.3.8 Education and CPD on Professional Ethics

As expected, no one had experienced ethics being specifically included in their Health and Safety education. Laura expressed her concern over education:

...and I think that's a really interesting point, because I think the limitation with health and safety education is the fact that it is very academic, it's very much based on here's the ideal situation, these are the solutions, here's a risk, here's the control measures. And the reality is, when you get into a work environment, it doesn't work like that at all. And I don't think that the current

¹⁶ Previous minutes from Professional Committee have recorded concern over members not complying with CPD requirements and provided evidence of this. These are confidential and so details are not given, however the point is still valid.

education system for health and safety practitioners helps to prepare you for that. (Laura, interview participant)

Hayland (1996) discusses the complex nature of practice in criticising competence-based education and training in the public service sector. Hayland (1996,p.172) notes that the inter and intra-relationships in practice demand high levels of ethical and moral understanding which are often ignored in education which focuses on mechanistic competences as described by Laura. Laura further discussed the inclusion of ethics into the education and CPD:

...I think it just needs to be built into the whole framework of how you become qualified, whether you're doing NEBOSH, whether you're doing a degree, whatever it is, it should be in the framework as part of your qualification. As part of your CPD, I think it should be more considered in there. They don't cover anything on ethics as such in CPD, and yet this is one of the issues that's causing the whole profession real problems.(Laura, interview participant)

Laura went onto describe her experience of discussing ethics with colleagues working as social workers. Social workers frequently participated in CPD that was largely designed around case studies. These cases raised ethical issues that participants debated to come to a decision on difficult causes of action such as whether or not to remove a child from a family. In a recent paper by Marshall and Teram (2009) on social workers attitudes to their Code of Ethics in Canada, the authors found a division between those that had faith in their Code of Ethics as a useful form of principlism informing practice and those that saw themselves as being virtuous albeit sceptical of the Code. It would appear that the health and safety profession is less aware of their Code than those in the Marshall and Teram (2009) study, however this believers and sceptics paradigm is useful in considering future health and safety education or CPD on ethics. There needs to be some underpinning knowledge on ethical theories and the Code is a useful analysis of practice based cases, as with the social workers CPD, it is yet to yield any benefit.

6.3.9 Employers interested in Codes of ethics

The general consensus amongst participants was that employers were not interested in the Code specifically, although some assurance of competence was required through CPD. Toby alluded to the employers' lack of interest in ethics but made the connection between ethics and competence:

I have never in all my history, come across an employer asking about ethics, it's been more competence and I think by virtue of them having a competent practitioner then they will have somebody who will have a high ethical...(Toby, interview participant)

Competence was a frequently referred to concept and the link was frequently made between ethical Conduct and the level of competence. Employers may view an ethical professional and a competent professional as the same thing. In appointing a Chartered member of IOSH they may assume that the professional body has responsibility to monitor competence and ethical Conduct, outsourcing this responsibility. Engaging employers may be difficult under these circumstances and it is perhaps another area of future research following the implementation of the new Code.

6.3.10 Reality Check

Ben described a situation that I have termed a reality check. There was much discussion among participants of the negative image of health and safety. The seemingly risk averse control measures that results from an over-zealous application of regulations. To some extent these concerns are valid and have been highlighted in a recent independent review of health and safety legislation in the UK for the government (Löfstedt, 2011). Ben however expressed concern over lowering professional standards:

I think the risk is that you advise to a lower standard because you didn't want to be perceived as being over cautious in your approach to what you're seeing around you. (Ben, interview participant)

In illustrating this point Ben recounted a situation when he felt he had lowered his standards because he did not want to appear over cautious, with disastrous consequences:

...when I was walking around, I saw lots of health and safety contraventions. It was a hot day and people had bought in electric fans, and it was obvious that there was trailing wires and loose wiring and all inappropriate wiring and things like that. I didn't say anything at the time, but two days later the whole premises burnt down through an electrical fault. And I changed my approach after that. (Ben, interview participant)

It is worth remembering that the real world of practice is never straightforward. Technical competence and ethical competence are required perhaps in equal measure to cope with the challenges that arise.

6.4 Conclusion

The strongest themes to emerge from the interviews were that of competence. All of those interviewed had examples of where competence played a significant part. Some had examples of where they had left employment because they did not feel competent and others considered competence to be more important to employers than the Code of Conduct itself. The responses on competence were very individualistic with no reference made to subordinate's competence or the participant's responsibility for it. The lack of awareness on the participant's responsibility for subordinates is perhaps an indication of a weakness in the existing Code. It may also be a consequence of health and safety professionals often working alone and not in teams. Despite this many health and safety professionals do end up managing teams and would therefore benefit from some guidance on their responsibilities for managing teams members' competence and CPD. There is also clearly a responsibility here to ensure team members are aware of and working to the IOSH Code. Competence as a code point clearly demands some guidance as it relates to practice. There needs to be clear explanation as to what competence

means and how to maintain it through CPD. In addition to this some of the examples given indicate that members occasionally end up working outside their perceived competency level. Guidance is therefore needed on how a member should tackle such a situation and avoid the risks associated. Honesty was also an area that was considered important with examples of dishonest behaviour on CVs or with consultants exaggerating risk being the most frequently discussed items. There were many examples of where respondents felt compromised due to perceived conflict between obligations to the employer and employee. Clearly further guidance on this will be required in the new Code.

What was also evident from the interviews was the participants desire to behave ethically despite the lack of underpinning knowledge on ethics or the existing IOSH Code. It could be argued that the participants viewed themselves as part of virtuous profession although more research would be needed to validate this. There was an underlying message that participants believe they are making a valuable contribution to society, whilst at the same time acknowledging that society does not always see it in that way.

The interviews provided a useful insight into current practitioner knowledge and their understanding of ethics and the existing IOSH Code. The qualitative nature of the interviews ensured that there was a rich source of information to interpret whilst at the same time allowing themes to be explored which would not have been possible in a paper based questionnaire survey.

As an activity the interviews were an extremely enjoyable stage, providing the rare opportunity to engage with practitioners on an individual basis to discuss ethical issues in the context of their own practice. There is scope for further study here with perhaps more interviews with deeper exploration of ethics in practice. This is suggestive of a limitation of this stage in terms of achieved depth and focus. However, it is worth pointing out the PC initially had little appetite for any detailed research in developing the new Code. For this reason the interviews were conducted as a separate activity as part of my own personal research connected to my programme of study. This raises the issues of conflict on professional doctorates between satisfying the requirements of real world development whilst also ensuring sufficient academic rigor. Despite this conflict the interview material did make a

valuable contribution to the guidance within the new Code document. It also remains fertile ground for further analysis and study, with perhaps follow-up interviews after the implementation of the new Code or following further ethical CPD education.

The experiential examples provided by the participants were successfully used to influence the guidance and the case studies for the final presentation to the IOSH Council. They were useful in providing real world examples to the committee during the deliberations of real cases under consideration. For example it was useful to reinforce the assertion that was often made during a committee that the Code was not widely understood and then defend this position by pointing out that we, as a committee, had a responsibility to close this gap. In addition cases that involved competence related issues were discussed in far greater detail with comparisons made to some of the examples provided here to allow themes to be further explored. There remains a rich source of information on practice that will be used to further influence the development of educational material and case studies for CPD once the Code has been launched. In particular the examples of exaggerating risks to convince employers to take action have a bearing on the wider context of practitioner education and health and safety policy generally. In an environment where health and safety is seen in a negative light the impact of such behaviours demands further examination and study.

6.5 Reflection on Stage 3

This was a challenging part of the development. It took practice to refine my interview style and develop the themes to be explored. The pilot study was invaluable in this respect. I had great expectations from the interviews in terms of ethical dilemmas that would be revealed however this was not the case. It appeared that participants awareness of ethics was limited and knowledge of the Code was restricted to its existence. Lichtenberg (1996, p.61) discusses the benefits of having a Code, one effect is that it can have a positive effect by helping people see what might otherwise not have been visible. There is perhaps evidence here that health and safety professionals are not fully aware of their ethical landscape. Ethical language was not generally used or many references to the Code made when discussing ethical issues. There is perhaps a lack of ethical underpinning to their general competence.

In reflecting on my own experience it is only through my engagement with the project that my own understanding of professional ethics has developed. I have benefited enormously from this and the effect on my practice has been profound. Lichtenberg goes onto caution that:

...the belief that a Code of ethics can serve legitimate purposes does not constitute an endorsement of blind obedience (Lichtenberg, 1996, p. 21).

The Code needs to be flexible and supported with real world examples to avoid its misinterpretation, after all health and safety professionals have already been criticised for misinterpreting regulatory requirements (Löfstedt, 2011, p.7).

Despite these shortcomings the interviews did reveal some interesting experiential insights into practice including some ethical issues that have made a valuable contribution to the Code development. I would envisage conducting further interviews after the launch of the new Code on a group who have had some ethical CPD training to see if this reveals any deeper insights into practice. It was also notable that participants didn't necessarily follow any adherences to the ethical theory paradigm model proposed in the literature review:

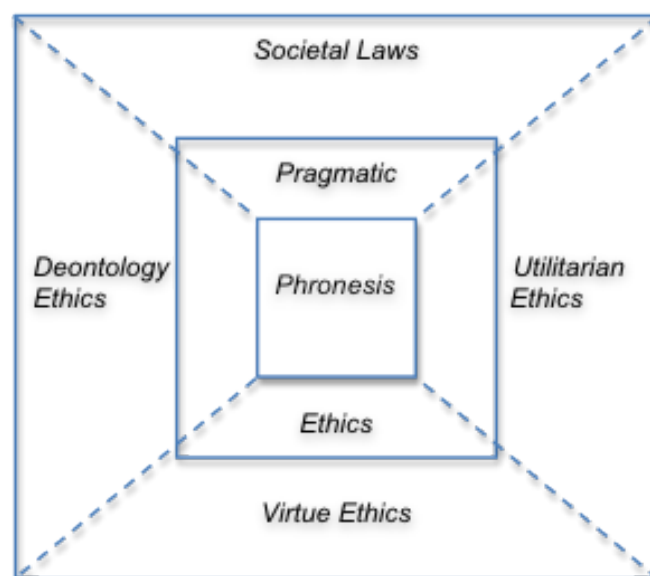


Figure 6.1: Ethical Theory Paradigm Model

Although there was experiential evidence provided that could be used to demonstrate an ethical approach as sitting within one of the segments. This could be a useful exercise in educational or CPD courses to improve ethical competence. Knowledge of ethical theories was limited, however some examples provided did show evidence of a wider pragmatic ethics in practice that has developed from experiential learning rather than any educational underpinning. An ethical educational underpinning would logically strengthen this position allowing more professionals to develop a pragmatically ethical approach perhaps arriving at phronesis when they become a truly expert and intuitive practitioner. The ethical theory paradigm model has obvious educational applications whereas the legal/ethical paradigm model discussed at Stage 2 is more applicable in capturing the landscape of misconduct. Combining the two models is perhaps not possible but it would be a useful exercise to evaluate an action against the legal/ethical model to situate it and then use the ethical theory model to evaluate the details of the actions against the theories to develop theoretical understanding.

As a professional, conducting interviews on other professionals, I became aware of the potential for bias. On the positive side as a fellow professional I was able to easily develop a rapport early on in the interview due to a common understanding of practice. In managing bias I ensured that all interviews were recorded and fully transcribed. I also stuck to the same opening introduction which included ground rules. I was also guided by the literature on interviews discussed in the methodology and reflected on this during the interview stage of the project:

The literature relating to interviews is coming alive, I can see its relevance to what I am doing and I am constantly referring back to it. Learning Diary
Excerpt 10th Aug 2010

The interviews also prompted reflexivity on my own practice in relation to professional ethics. I wanted to interview myself and although this was not possible it did occur to me that my immersion in the subject of professional ethics through the project has revealed to me some ethical dilemmas previously unrecognised. This being the case it could be assumed that with an enhanced understanding of professional ethics health and safety professionals would become aware of ethical

issues and manage them more appropriately through reflection as I was beginning to do.

Transcribing the interviews from recordings was extremely time consuming. I transcribed four interview recordings myself and employed a transcription service to do the rest. I did however find it useful to read the scripts whilst listening to the recordings. This provided nuances that are often lost in a written transcript. Hyper Research was useful in developing themes from the large amount of qualitative data obtained. This was my first experience of using such techniques and it took some time before themes began to emerge from this mass of information. For the project write up I only selected those quotes that I felt made a significant contribution to the work, although I am aware that rich sources of data still remain in the transcripts that do not appear here. I certainly have an enhanced respect for the work involved in qualitative data analysis. Initially I found it frustrating but in the end I began to enjoy this form of critical analysis and have since made use of these techniques at work in exploring other issues.

Whilst there were some interesting ethical issues raised none of them amounted to real dilemmas. It would seem that the term ethical dilemmas could be misleading as some of the examples revealed in the interviews and other evidence presented to the Committee when examined do not appear to be strictly dilemmas. There is a significant amount of literature relating to ethical dilemmas (Lemon 1962, MacIntyre 1990). A true ethical dilemma is often described as involving a conflict between two choices, both of which ought to be done but cannot and so to choose one option would lead to a moral wrong as one could not perform the other option. There is some debate as to whether true ethical dilemmas ever actually arise in practice and empirical evidence for this is largely restricted to areas of medicine involving stark choices between life and death. Kant's categorical imperative would appear to prohibit dilemmas as the rational agent can only act in accordance with one formulation of the moral law and there can never be two obligatory acts. Another way to view this would be to see *prima facie* duties as hierarchical and not conflicting so one could always be chosen over the other thus avoiding the dilemma altogether.

Ethical issues however do arise in practice and practitioners are aware of them. In resolving them, practitioners did not appear to have a clear strategy or underpinning educational schemas to help them. The existing Code of Conduct and guidance was seen as a passive document in this regard, only used after the event to prove misconduct and not referred to for guidance. Many participants admitted having not referred to the document and in one case never in twenty years of practice. These disclosures made quite openly despite it being a condition of membership that chartered members are aware of the contents of the Code and when renewing their members sign to acknowledge this fact. It would be safe to say then that knowledge of the existing Code and guidance is restricted to its existence and not necessarily to the contents. This raises the question as to what the Code is actually for? Is it a disciplinary document to be read only where an allegation of misconduct has been made? The evidence suggests that this is currently the case. This perhaps is hardly surprising given that ethics and Conduct are not generally covered in either the professional diploma or degree course underpinning Chartered membership. It is perhaps for this reason that practitioners tend to lean towards a technical rather than an ethical rationale when dealing with workplace problems. This lack of underpinning ethical knowledge may also explain the gap in examples of ethical dilemmas articulated by the participants due in part to a superficial level of awareness of these ethical issues.

My own experience confirms this hypothesis. When asking postgraduate students, many of whom had considerable workplace experience, about ethical issues they have encountered in practice, many struggled to think of an example. When prompted by hypothetical examples it was as if a door in their mind had been opened and many examples followed. The knowledge of ethical theories was always weak and much of the searching for answers fell into a debate about what the law requires or level of competence. Competence and ethical practice seem to be closely related in the minds of practitioners and this was true in terms of those being interviewed.

Health and safety professionals like others tend to learn heuristically through trial and error. There is, however a desire to have schemas available to apply to most situations encountered in practice and these are largely underpinned by technical not moral understanding. Ethical issues appear to arise when novel situations arise

creating uncomfortable feelings due to the lack of available schemas to deal with the situation. When faced with this situation the practitioner may struggle, finding their prior training and education lacking in this regard. Existing schemas may actually hinder the learning of new information or approaches to certain ethical issues that arise. As Voltaire puts it:

Doubt is uncomfortable, but certainty is ridiculous. (Redman 1977)

This reminded me of another Voltaire quote commonly used by health and safety educators to dispel the myth of common sense as a reason not to apply systematic thinking to health and safety risks:

Common sense is not so common. (Redman 1977)

Analogous to the common sense fallacy, the identity of competence is neither straightforward nor easy to measure. As previously discussed it is essentially a combination of factors, experience, education and knowledge. Two of these factors are to some extent arguably measurable the other, experience, is less tangible to measure. Copernicus alluded to what he considered true knowledge by implying that a certain amount of self-awareness was necessary:

To know that we know what we know, and to know that we don't know what we don't know, that is true knowledge. (Rabin 2010)

In considering ethical competence Friedman (2006,p.61) recommends that to ensure public trust and confidence professions need to consider this as part of general competence. I would argue that ethical awareness and with it ethical competence is low among health and safety professionals. This is not to say that health and safety professionals are unethical only that they are not consciously aware of their ethical behaviours in practice. A certain amount of ethical education would have a beneficial effect on professionals who are already familiar with reflective practice, as required by the established CPD system, in helping them recognise ethical issues and dealing with them effectively.

CHAPTER SEVEN – STAGE 4: PRESENTATION OF A NEW CODE OF CONDUCT TO IOSH COUNCIL FOR APPROVAL

7.1 Plan

Following Stage 2 and occurring simultaneously with the interviews in Stage 3, Stage 4 involved the refinement of the Code and further development of the guidance ready for presentation and approval by the IOSH Council. The IOSH Council consists of 44 senior health and safety professional that represent the interests of the membership on matters of policy. Recommendations from the Council are made to the Board of Trustees. Members of the IOSH executive management team also sit with the IOSH Council to advise on matters of proceedings, byelaws and the Charter. The IOSH Council is chaired by the elected IOSH President who is supported by a number of vice-presidents including the immediate past president.

The presentation of the proposed IOSH Code and guidance was an important step in achieving final approval.

After some discussion with members of the Committee it was agreed that a consultative approach would be taken. This would involve distributing the proposed Code to the IOSH Council in advance of the meeting and then doing a formal presentation at the meeting. The presentation would include the rationalisation for the proposed change and include a case study exercise with debate. The results of the case study exercise and debate would then be used to inform further developments with the proposed Code and guidance in preparation for a final presentation and approval.

7.2 Action

The proposed IOSH Code was refined and proof read for presentation to the Council. The version presented on this occasion still required some work on the guidance and it was felt that rather than being the presentation of a final document, this would in fact be an opportunity for Council to be involved in the development process. To achieve this it was necessary to have the IOSH Code as close to a final version as

possible. To get the Council to engage with the IOSH Code a series of case studies were developed that created hypothetical examples of potential misconduct. A mixture of previous cases and experience of the Committee members and the participants in the semi-structured interviews had informed these case studies.

A total of 6 case studies were developed by the PEC. These are attached at appendix H When developing the case studies the following criteria was established by the PC following consultation:

1. They must be interesting, realistic & representative.
2. Case study examples shall be based on actual experiential learning or cases heard by the Committee.
3. They should represent a range of possible breaches of the proposed Code.
4. The content should allow for debate and discussion amongst members on;
 - a. Ethics, dilemmas and decision-making.
 - b. Application of the Code, potential breaches therein and sanctions.

The case studies used during the presentation to council, the alignment with the Code and source are captured in the table below:

Table 7.1: Code of Conduct Case Studies for IOSH Council

Case Study	Area of Code related to	Data obtained from
Case A - an incident involving drunken behaviour whilst not at work that resulted in a criminal conviction.	Integrity - Law <i>Committee had been interested in the effect of the Code on professional's private life. Also similar cases in the press involving teachers, nurses and politicians.</i>	Consultation with Committee members Newspaper articles
Case B – a trainer delivering an IOSH managing safely course who is accused of behaving in an inappropriate manner.	Respect Service	Experiential learning portfolio Interviews
Case C a member who has been reported by a recruitment company for being dishonest on a CV.	Integrity – Honesty Competence	Similar to an actual case heard by the Committee. Several members have had personal experience of persons lying on CV's. Interviews
Case D - a consultant who Conducted an audit under contract for a client but has failed to provide the audit report.	Competence Service	Consultation with the Committee members Experiential learning portfolio
Case E - a practitioner who has	Integrity	Consultation with Committee

Case Study	Area of Code related to	Data obtained from
been convinced to lower their standards of practice to provide a health and safety file for a construction project without visiting the site.	Competence Service	members Interviews
Case F - an issue relating to competence and standards of practice of a member reported by a contractor-vetting organisation who was mistakenly forwarded an email.	Competence Respect	Similar to an actual case heard by the Committee. Experiential learning portfolio Interviews

Following the presentation, the IOSH Council were placed in groups and each group was provided with a different case study to work on. The groups were each allocated a facilitator from the working group and asked to discuss the case in relation to the Code to reach a consensus on:

1. Whether there is a case to answer against the subject?
2. If there is a case to answer what sections of the Code may have been breached?
3. What sanctions if any should be applied?
4. Is there anything else that should be considered when reviewing this case?

The groups were asked to record their thoughts on flip chart paper and prepare a 5-10 minute presentation answering the questions above and including their rationale on reaching these decisions for discussion with the rest of Council. Groups were free to make any reasonable assumptions felt necessary and asked to clearly state these in their presentation.

Following the Sep 2010 IOSH Council meeting revisions were made to the documents and circulated again for further comment by Council members. Selections of these comments are captured as anonymous quotations for discussion and were then summarised in a table. Based on this feedback and further consultation with the PEC a subsequent presentation of the new IOSH Code and guidance was made to IOSH Council in Feb 2011.

Following the Feb 2011 presentation and approval by Council work was undertaken to improve the disciplinary procedures. A new disciplinary regulations document was presented at the Sep 2011 IOSH Council meeting. This included a separate complaints handling document for discussion and approval, by IOSH Council.

7.3 Observation

7.3.1 Introduction

Minutes and notes taken during the IOSH Council meeting were used to provide a report written by the EPM and myself back to the PEC. A copy of the notes from the IOSH Council meeting addressing item 4 on the agenda on the Code of Conduct is attached at appendix I. Some of the key issues to emerge from the IOSH Council session are now discussed. Any quotations provided from the IOSH Council meeting are anonymous and presented under the following Codes:

CM – IOSH Council Member

PM – Panel Member including member of the PEC and IOSH Officers

PP – Past President

7.3.2 Requirement to Notify IOSH of any Criminal conviction

Following the presentation there was a panelled debate on the proposed IOSH Code with members of the PEC. The focus of this debate was on legal issues contained in the new IOSH Code. There was particular disquiet about a requirement to notify IOSH of any criminal conviction. Several people expressed the view that this would lead to several thousand parking tickets becoming disciplinary matters each year. On reflection this argument did not take into account that the current IOSH Code point 18 says a relevant conviction 'may' (rather than 'shall') lead to disciplinary proceedings. There was one suggestion whether to notify IOSH should be a matter for the discretion of the individual member convicted. The PEC did not consider this approach suitable. A member could decide not to inform IOSH because they think the conviction resulted from either the wrong decision or a harsh prosecution. This would be a decision for the relevant IOSH Committee, not the individual and decisions would be made on a case-by-case basis.

In reviewing other professional bodies' approaches to criminal convictions during the benchmarking, IOSH was not unique in requiring any conviction to be notified. The undertaking on admission to any class of RICS membership includes an undertaking to declare any criminal convictions within 30 days.

The key issue emerging out of the IOSH Council debate was whether a blanket requirement to notify criminal convictions was necessary if developed guidance is likely to point towards no further (formal) action for some relatively minor offences. It was not always easy to tell from the information on a certificate of conviction whether the member could have been sentenced to a term of imprisonment. In a case, heard by the IOSH Disciplinary Committee in May 2010, the certificate of conviction showed a guilty plea to four offences, which were all stated without reference to any legislation.

The problem with the 'conduct unbecoming' charge was that legal representatives for members charged would submit that this charge implied disgraceful or infamous Conduct. Thus they would further submit that burden on IOSH was to demonstrate higher culpability than usual such as bad faith or gross negligence. To establish that the Institution was brought into disrepute required evidence that the membership relationship was reported as well as the conviction.

In the disciplinary regulations of the Association of Accounting Technicians (AAT), all members are required to inform it if they have pleaded guilty to or been found guilty of an indictable offence. This term would pick up 'indictable only offences', which must be heard in the Crown Court, such as murder and rape. It would also pick up offences 'triable either way', which can be heard in either the Magistrates' Court or the Crown Court. It would not, however, pick up 'summary offences', which generally may only be dealt with in the Magistrates' Court. The AAT approach is not really suitable for IOSH as some offences under the Health and Safety at Work etc Act 1974 are summary offences. For instance intentionally obstructing an inspector contrary to Section 33 (1) (h) is a summary offence and so is impersonating an inspector contrary to section 33 (1) (n). Magistrates may send a person to prison for obstructing an inspector but not for impersonating one. It is difficult to understand

why falsely pretending to be an inspector, which must involve dishonesty, is not punishable by imprisonment.

There are other examples of summary offences that appear to involve dishonesty. Supplying false information either on an electoral registration form or on a postal/proxy application form is a summary offence contrary to Section 13D of the Representation of the People Act 1983.

The AAT approach is interesting because there are summary offences with a maximum penalty of six months' imprisonment and / or a £5,000 fine. (It may also be the case that when certain sections of the Criminal Justice Act 2003 come into force the maximum penalty for some summary offences will be 12 months' imprisonment.)

The recommendation to the PEC was that members should be required to notify IOSH if they have been convicted in Court (whether they were present or not) of a criminal offence. This would mean that pleading guilty to speeding by post would not be covered. There is an argument that such a process is not a conviction anyway because it is accepting a fixed penalty notice (FPN) where the effect of acceptance is to discharge any liability to criminal conviction. Speeding is criminal but in the opinion of some accepting a FPN will not result in a criminal record because it is not entered on the Police National Computer (PNC). Unfortunately what constitutes a criminal record is open to debate and conjecture.

It should not necessarily be the case that a conviction that a member is required to notify IOSH of will lead to disciplinary proceedings. For example if a member does not accept a FPN for doing 36 mph in a 30 zone and is found guilty in Court, then, in the absence of any media focus on IOSH, charging a breach of the IOSH Code may be considered too severe.

7.3.3 Sanction(s) for some convictions with publication of members' names

Some IOSH Council members seemed to think self-notification of a conviction is the point of no return for a disciplinary hearing and possibly the first step to losing membership. The PEC had previously considered consent orders comprising of

sanctions lower than suspension or expulsion. This could suit a situation where the member drew their conviction to the attention of IOSH, fully co-operated with enquiries and expressed regret.

Consent orders are an outcome agreed with the subject of the allegation. They could be wider than the existing lower level sanctions of guidance and reprimand. They could include undertakings such as the provision of further information, like documentary proof of payment of fines or performance of community service, or resignation from IOSH Committee positions.

Consent orders could be unsuitable where the conviction resulted from a prosecution following an accident investigation. Other factors pointing towards not offering this option would be if the offence was violent, sexual or involved dishonesty with intent to gain or deprive another of money or property.

Publication of consent orders could be anonymous, provided that the conviction had not attracted previous publicity associating IOSH with the convicted member. Occasionally even a member who proactively informs IOSH that he has been convicted may wish to deny misconduct. A consent order can only be based on an admission of misconduct and for clarity should record what it is addressing. It will form part of the member's Conduct record and could be taken into account in future where any further misconduct is admitted or otherwise proved.

There may be cases other than convictions where facts are not in dispute but the member denies that the facts in question amount to misconduct. If the PEC determines there is a case to answer against a member who denies misconduct then referral to the Disciplinary Committee is currently the default option. It might be useful, however, for the PEC to have the facility to direct that the subject of the allegation be informed that had they admitted misconduct then it would have offered a consent order rather than going to the disciplinary Committee and potentially receiving a more severe sanction. The subject of the allegation could be given a window to admit misconduct and accept the offer. The correspondence would state that it was not an invitation to negotiate and that if the Disciplinary Committee became involved it would be considering the matter afresh and would not be fettered

to the consent order offer. In simple terms the PEC would be adjourning the case for a short period. The benefit being that the time and expense of convening a disciplinary Committee for a minor offence is avoided.

The Chartered Institute of Management Accountants (CIMA) has an investigation Committee. It considers all complaints and decides whether there is a prima facie case of misconduct to be answered by the member or student concerned. Where a prima facie case of misconduct is established, the investigation Committee may:

- Conclude a complaint by way of the consent order procedure. This requires the member or student concerned to agree to the imposition of a sanction(s);
- Decide it is appropriate to refer the complaint to the disciplinary Committee for determination as to whether the member or student is guilty of misconduct.

The investigation Committee does not have the authority to expel members or to cancel student registrations, and the complaints it concludes are of a less serious nature. If the member or student concerned does not accept a consent order when offered by the investigation Committee then the matter can be referred on to the disciplinary Committee.

7.3.4 Requirement that members notify IOSH if they are charged with a criminal offence

As well as notification for a conviction the issue of notification for a charge concerning an offence was discussed. This level of notification is actually a change to existing arrangements. The disciplinary procedure allows suspension with immediate effect if the Subject of the Allegation is charged with or convicted of an offence under the Health and Safety at Work etc Act 1974 (the 1974 Act). Code point 18 of the existing IOSH Code, however, only requires members to notify IOSH if they are convicted. In the proposed IOSH Code it requires members to notify IOSH if they are charged with a criminal offence. There was concern among Council members, as one member put it:

What about innocent until proven guilty? CM1

Innocent until proven guilty is a difficult criticism to argue against. There is surely, however, at least an argument to be made that it is prejudicial to the interests of IOSH not to know that one of its members has been charged under the Health and Safety at Work etc Act 1974, especially given the media interest in health and safety as well as the potential impact of continued practice on the health, safety and welfare of others. The recommendation made to the PEC was that members should only be required to notify IOSH if they have been charged where the alleged offence is contrary to any health and safety legislation.

There were calls to define the professional activity so the application of the IOSH Code could clearly only relate to that:

IOSH should define the professional activity at the start of the [IOSH] Code so that anything else lies outside it. CM2

It is true that the majority of the IOSH Code is related to professional matters however it could be argued that the collective reputation of a profession is diminished if Conduct that society regards as beyond the pale is ignored because it was a 'private matter'. In 2009/10 the IOSH Disciplinary Committee (on which there is a lay majority and chair) decided that expulsion from membership is the appropriate sanction for offences like distributing indecent photographs or pseudo-photographs of a child and engaging in sexual activity in the presence of a child under 13.

7.3.5 Precautionary suspension

The potential exercise of such a power where a member had only been charged with an offence under the 1974 Act, views were expressed that:

Precautionary suspension, if publicised, would kill a [consultancy] business.
CM1

Members concerned about precautionary suspension were perhaps only putting themselves in the shoes of the member concerned. The commercial fate of an individual, however, has to be weighed against the public interest. A Panel member reflected on his own experience at RICS:

I can recall members lobbying for the temporary suspension of a member when it was reported that he was going to be prosecuted by the Serious Fraud Office for his involvement in an alleged £17million pound commercial mortgage fraud. PM1

Public confidence in a whole profession could be seriously damaged if the innocent until proven guilty approach is taken. Regulation in the public interest may mean that a member's livelihood is affected before a criminal case reaches trial. IOSH would be out of step with other professions if it did not have the precautionary suspension power. What could be changed is the process both for exercising the power and for challenging the exercise of it. The recommendation to the PEC was that it should be the main Committee involved in precautionary suspension decisions. This area, however, perhaps raises the issue of whether there should be lay participation on the PEC to ensure some independence in these decisions.

7.3.6 Application of the Code outside the UK

There was some discussion about the Code's application outside the UK. IOSH has an international membership and IOSH members frequently visit colleagues abroad. As one past president of IOSH stated:

...for those going out on ambassadorial roles it [The Code] needs to be clear and there are times when you are possibly outside the Code in order to profile IOSH and health and safety. For example in Dubai, I couldn't drink water in public because of ramadam but if I did drink, it wasn't criminal but would look bad on IOSH. PP1

Other examples may include criminal activity for example as already discussed in Stage 2, some laws may not appear ethical from our point of view, for example

stoning adulteresses or restriction on kissing in public (BBC 2009 and BBC 2010). There are several possible breaches here, firstly a potential conviction under local laws and secondly bringing IOSH into disrepute. In making determinations on these issues the Committee would be likely to make decisions on a case-by-case basis. This would involve looking at the details and merits of the case in making a determination. Intent is an important factor here. This in turn led to a discussion about genuine mistakes, as one Council member expressed:

What if H&S practitioner made a legitimate genuine mistake how would this be dealt with? CM4

Arguably making a mistake could have varying degrees of consequence. A typographical error in a report, ignorance of local laws or inappropriate comments during a training course, (as in the case study example), is perhaps forgivable to a point and may result in guidance or at worst a reprimand. However a mistake that puts lives at risk, such as failure to advise on the correct control measures is probably not and would raise questions of competence. In response I commented that making a mistake does not necessarily mean it is unethical or misconduct and that each case is appraised on its own merits, although mistakes are sometimes an indication of a lack of competence.

7.3.7 Service

Despite the preoccupation with legal issues there were a number of concerns raised regarding service. In particular there was a question regarding professional indemnity insurance requirements and whether this was an ethical issue. As a Code of Conduct not all issues contained in the IOSH Code are strictly ethical. This is why the principle heading of service was created. Its purpose is to capture Conduct issues that relate to client expectations of service that if not met would potentially bring the institution into disrepute. Professional indemnity was felt by the majority to be a necessary requirement for a practicing health and safety consultant to protect the interests of the client. One of the other requirements in the proposed Code prompted some further concern:

...in relation to keeping written records, we provide a lot of things via telephone and we do not always follow it up with written records. CM5

The PEC has experience of dealing with allegations of misconduct involving disputes over agreements on services. Where there was most disagreement was often in what was originally verbally agreed between the consultant and the client. In asking members to keep written records and make agreements in writing the IOSH Code is seeking to protect both parties from any future dispute. With modern technology it should be possible to capture the majority of agreements in writing, with the exception of perhaps an emergency situation.

7.3.8 Feedback on Case Studies

Following the Panel discussion the IOSH Council were put into groups with each group provided with an ethical case study and a copy of the proposed Code. A member of the PEC facilitated the groups. A summary of the main issues raised during each group's feedback are summarised below:

Case Study A

This involved the case of a local newspaper report concerning the arrest and conviction of a health and safety officer for drinking and driving a dumper truck after a hen night. In considering the case members of group A re-visited the previous discussion during the panelled debate on whether a conviction of this nature was a private affair. There was also consideration made as to whether a driving ban and fine was a significant conviction. It was felt that this had brought IOSH into disrepute and therefore warranted some disciplinary action. Expulsion was considered but thought to be too severe. The issue of intent was debated and the contributory effect of alcohol affecting judgement was also considered. This led the group to think about issues that may have led to excessive consumption such as personal problems or stress at work. The group were content to issue a reprimand and felt that there were perhaps grounds for including support to members if it became apparent that there were other contributing factors.

Case study B

This involved a complaint following inappropriate Conduct by a trainer when delivering IOSH accredited training to managers in a social services department. The group identified that some of the derogatory language used may not have been intentional although it was accepted that the result had been to cause offence. This led the group to discuss the meaning of intent as it related to professionalism. The expectation of those attending the course was that certain standards of respect and service would be included in addition to technical competence. The issue of age and geographical origin of the trainer were debated with some indicating that the use of the words 'dear' and 'love' in certain regions and among certain age groups. There was the inevitable 'political correctness gone mad' comment, however this was countered by others who focussed on the 'offence caused' argument rather than the freedom to act in accordance to social norms argument. The social norm in question was that of construction worker environments where this type of language may be normalised and even expected whereas in a local authority it would be considered inappropriate and against policy. The debate on this issue was concluded with group members agreeing that the trainer would need further guidance and perhaps training on equality and diversity as part of his CPD plan. In terms of a sanction the group felt that the trainer's motivations were virtuous even if the outcome was offensive and therefore a caution of sorts with guidance was appropriate. It was noted that a caution was not an option in the proposed or existing IOSH Codes and therefore it would go to a reprimand. The wider context was also discussed with the suggestion of undercover students, so called 'secret shoppers' to assess the quality of trainers' delivery. Interestingly the issues of honesty and secret shopper were not recognised.

Case Study C

This involved an issue of dishonesty where a graduate member claimed to be a Chartered member on a CV to get a job. The group felt this was dishonesty and a clear breach under that Code point. Additionally it was also felt that there had been a misrepresentation of the facts for financial gain, which was seen as an issue of integrity. The group discussed the likelihood of legal action as a case of fraud and the implication for the profession had it been a regulated profession such as the financial services industry. Although the group felt this was serious they did not feel that IOSH had been brought into disrepute. As such the sanction agreed by the group was a

reprimand with guidance and CPD, although it was acknowledged that compulsory CPD was not an option in the current disciplinary procedures. It was widely felt that the recruiting company also took some responsibility for not correctly vetting their candidates and therefore should also receive a letter from the Committee. The PEC pointed out that membership checks are easy to do with a simple phone call to the membership department. The group generally agreed that this type of misrepresentation was probably common especially with consultants and demonstrated a real need for a widely communicated Code to improve members' ethical practice.

Case Study D

The group felt that this was a unique case. The member was in the middle of a messy divorce and over worked. The first consideration of the group was pastoral in considering what support he had during this time. The group were agreed that whatever the reason there was a breach of Code points relating to respect. In addition it was considered important that his CPD record is reviewed to see if there had been a breach under competence relating to CPD. The group (s) considered sanctions hard to determine under these circumstances and felt they needed further guidance in respect of what is required towards the client. The group wanted an option relating to compulsory CPD and also felt that a reprimand was probably appropriate. At this stage the group revisited the issue of support from IOSH to its members and felt that the profession should not only be about punishing members but should also offer support and further education or CPD as required by such cases.

Case Study E

The case involved comments made by a consultant to a client that were mistakenly forwarded by email, advising that they misrepresent facts to a contractor-vetting organisation. This case divided the group in that some felt that all aspects of the IOSH Code had been potentially breached, whilst others were unsure as to whether it was a matter of IOSH to deal with. This was discussed and it was agreed that as an allegation had been made it should be considered by IOSH. The issues of competence, integrity and service were all considered. There was a consensus that there was no case to answer although guidance should be given to the consultant.

Not everyone agreed with some considering this behaviour by the consultant extremely serious.

7.3.9 Discussion on the Case Study Exercise

The case study exercise was a useful way to engage IOSH Council members in the new IOSH Code and its application to the real world. It was interesting observing how the majority of members firstly reflected on their own experience and secondly referred to the Code when making decisions. There was frequent re-examination of the IOSH Code to substantiate certain points made. Everyone agreed that it was difficult to interpret the IOSH Code without further guidance. Concern was also expressed about the tone of IOSH Code and it was widely agreed that the foreword should be improved to include a call to ethical practice and some indications as to IOSH support mechanisms as well as expectations. There was some discussion about the levels of compulsion in the IOSH Code. There was a suggestion that 'shall' was a harsh phrase and could be replaced with 'should'. There was disagreement about this with many on the IOSH Council concerned about watering down the IOSH Code citing the case study example outcomes as examples of where the IOSH Code needed to be clear and concise with a high level of compulsion. The brevity of the IOSH Code was seen as a good thing in removing ambiguity however there was agreement that it needed real world guidance to aid interpretation again citing their recent experience of handling the case studies as evidence of this.

There was a distinct move away from the preoccupation with legal issues evident during the panel discussion to considerations of ethical practice raised in the case studies. This transformation was put to good use when the IOSH president suggested that IOSH Council members have the opportunity to comment on further amendments and add to guidance, this was noted in the Council minutes:

Following a discussion, JH proposed that the Professional Ethics Committee (PEC) refine the draft Code and produce the necessary guidance, taking into consideration the points raised by Council, by 31 October 2010. The revised Code to be emailed to Council and comments returned by 30 November 2010 and then sent to IOSH's lawyers over the Christmas period; the Publishing

Department to then put the document into IOSH's 'house style' by the end of January 2011 ready to go to Council in February 2011 for approval. The Code would then be sent to the BoT for final approval at its March 2011 meeting. SA seconded, and with 26 votes for, none against and no abstentions, the proposal was unanimously approved. Extract from IOSH Council Minutes Sep 2010

The requirement to get the new IOSH Code reviewed by the IOSH lawyers was expected and welcomed in addressing some of the legal comments raised by Council. A unanimous vote by IOSH Council members was a real achievement for the Professional Committee and was a motivating factor in the progress of the Code towards the final stages. The IOSH Council outcome was reported back to the PEC by email and at the December 2010 meeting as noted in the minutes:

SL recapped the background to this agenda item. On 14 September SA and SL had made a presentation to Council on the rationale for a radical overhaul of the Code of Conduct, which had emerged from a PC Working Party lead by SL. The case was put for remodelling the Code around 5 standards; Competence, Respect, Honesty, Integrity and Service. The presentation was well received. There was a question and answer session in which SA and SL were joined by TB, HH and SB as a panel to respond to points raised. The most common and strongly worded concerns were about replicating the extant obligation to notify the Institution of any criminal conviction and the precautionary suspension mechanism in the disciplinary procedure. There were then five break-out syndicate groups, each of which considered a different case scenario using the new Code. In principle Council was in favour of the new Code provided that accompanying guidance was fully developed. It was agreed that SL and SB would reflect on Council's comments, amend the Code and add to the guidance in order to consult again with Council via electronic distribution before the next Council meeting in February 2011. Extract from IOSH PC Minutes Dec 2010

7.3.10 Further Developments and Consultations

There followed numerous email exchanges on developing the Code. Some exchanges were as a result of conversations with other PEC members on aspects

of guidance. We also received additional feedback from IOSH Council members that is discussed further below. Other contributory information came in the form of conversations and correspondence between the EPM and members seeking advice on ethical issues. As an example an extract from an email between the EPM and me is given below in relation to an ethical issue raised by a member. The first part of the email contained confidential information and therefore is not included, however the issues were related to an employer not following the advice given and the member's anxiety over what to do next and how this fitted in with the existing IOSH Code. An extract of my response is given below:

I've had time to read this now. This type of dilemma is I feel quite wide spread and I have experienced similar problems with clients. It is interesting that the consultant was conscious of the dilemmas and took the step of contacting you. It gives me confidence that the need for CPD in this area is real and for some desirable to help improve their professional practice. The advice given is useful and comprehensive. It reminds me of the grey issues advice sheets published on the CISI website on ethical dilemmas. I think we would be quite safe in publishing a few of these to encourage some engagement with the Code and wider ethical issues. I wonder whether Whistle-blowing is an issue we should also consider.

Email dated 22nd Oct 2010

The Public Interest Disclosure Act 1998 protects workers who 'blow the whistle' about wrongdoings. It applies where a worker has a reasonable belief that their disclosure tends to show one or more of the following offences or breaches: a criminal offence; the breach of a legal obligation; a miscarriage of justice; a danger to the health and safety of any individual; damage to the environment; or deliberate covering up. The Health and Safety Executive (HSE) supports measures that protect whistleblowers from any form of victimization (HSE 2000, p.5). The HSE has a complaints handling system to ensure that concerns about health and safety are dealt with effectively and efficiently. HSE and local authority staff indicate that they do all that they can to preserve the confidentiality of workers who raise concerns about health and safety. This prompted the inclusion of whistle blowing advice into the guidance. This had not been raised by the IOSH Council or the PEC previously but had come up in the

interviews. Unfortunately NEBOSH had removed its inclusion in their syllabus due to competition from other technical requirements. The inclusion into guidance therefore ensured that the issue of whistle blowing was not left out entirely and provided the opportunity for its inclusion in future CPD to compensate for its omission from the educational syllabus. This was not the first time whistle blowing had been mentioned, during interviews several participants made the point that as a last resort they would consider going to the HSE if the employer was ignoring their advice. Although no examples were given it is logical to assume that this has happened at some point and the advice provided by the HSE appear to corroborate this assertion.

We also resolved to further simplify the principle headings. We had also discussed the order of the principles and whether competence was the most important and should go first. I was reluctant to lose our acronym 'CHRIS' however logically Integrity would appear to be the highest-level principle from which all others follow. As Cox *et al* (2011) writes integrity is one of the most important and often cited virtues. It appears in virtually every professional Code and is included in many guides to Codes and is one of the most common values for liberal professions in the EU (CEPLIS 2007). We also discussed honesty at length. Honesty as a principle was limited to only two Code points made under it. Integrity would appear to encompass honesty as a principle and we therefore resolved to reduce the Code points from five to four and essentially kill 'CHRIS'. This was not a clear decision and there was some doubt at first, 'CHRIS' was useful in assisting with creating a memorable IOSH Code. In the end we settled on the four Code points in agreed order of importance, Integrity, Competence, Respect and Service. An extract from an email between the EPM and myself capturing this point is shown below:

I really like what you have done. On Honesty I wondered whether we just put 'Be honest' under Integrity and reduce the standards from 5 to 4. It's highly probable that this Friday I am being more irritating than unusual and doing a U-turn on previous discussions. Email Extract 20th Oct 2010

This allowed further simplification without losing content. The PEC was in agreement and we subsequently sent out a revised version with additional guidance to IOSH Council members.

7.3.11 Examples of Council Email Comments

Following the September 2010 IOSH Council meeting revision were made to the new IOSH Code and guidance as recommended. The document was then distributed by email for further comment by the IOSH Council members. The comments received were organised and evaluated against the IOSH Code and guidance. A selection of relevant comments is given below with discussion to illustrate how they impacted on the new IOSH Code development. The quotations taken from emails are anonymous and Coded as:

CM – Member of IOSH Council

PEC – Member of the Professional Ethics Committee

IO – IOSH Officer

The majority of the comments were positive making no additional suggestions for the IOSH Code or Guidance, for example:

I think the revised Code and guidance are both really good. I think they strike the right balance in terms of enough explanation to make the obligation clear while not being over-lengthy. CM6

One in particular related to the application of the Code to professional examinations:

Looking at it from a National Examination Board in Occupational Safety and Health (NEBOSH) point of view (rather than as an IOSH Council Member) I think it adequately covers situations where IOSH members engage in malpractice related to examinations. CM7

This was encouraging as we had taken the step of removing additional guidance on education and training that appeared in the existing Code as a result of the benchmarking at Stage 1. The rationale being that it did not add to the Code and may even conflict with it. The suggestion was that the focus for any additional guidance in this area would need to take into account existing ethical guidelines that may be in existence at training organisations or higher education institutions. This was particularly relevant when it came to research as all higher education institutions

have ethics Committees and any guidance needed to be compatible with current thinking on research ethics. As the existing Code was limited to requiring a member to be honest there was a straightforward application of this in case of academic malpractice as may be defined by the institution or examination body without any conflict. In relation to students one Councilmember raised concerns about competence:

Competence 2:1 Ensure they are competent to undertake proposed work -This may put students into conflict - do we need to add anything that will allow students or even chartered members working towards developing competence to be added as a rider? CM8

We had considered this point in creating the Code and had included four separate Code points relating to competence. In addition the one cited here there was also a requirement to:

Ensure persons working under their authority or supervision are competent to carry out the tasks assigned to them. Extract from the Proposed Code of Conduct
Appendix F

As well as Code points relating to completing CPD to maintain competence and notifying your employer of your level of competence to undertake certain types of work, the guidance to the Code point above further outlined the responsibility for monitoring competence that could be applied to students working in a team as advisors. In determining competence we used the standard definition from the Management of Health and Safety at Work Regulations 1999 Approved Code of Practice HSE (2000, p.24) of suitable level of knowledge, experience and education and captured this with an example in the guidance as follows:

Competence is a combination of knowledge, skills, experience and recognition of the limits of your capabilities. Knowledge can be gained or developed by studying for qualifications, but a qualification, by itself, is not evidence of competence. It must be enhanced by skills and knowledge that you develop through experience.

For example, as a health and safety practitioner you will have studied the harmful effects of noise along with prevention and control strategies for noise. You may not, however, have been taught the skills or have had the experience to be competent to undertake a detailed noise survey. In this case you would seek the services of a competent person in noise assessment or attend the appropriate course and gain experience to raise your competence to an appropriate level to undertake the survey.

Extract from the Proposed Code of Conduct, Appendix F.

This simple example was chosen to illustrate the issues of competence as it may relate to practice. We considered several examples drawn from our experiences. It was agreed that a single example would suffice and that additional guidance may be added in the form of a separate technical document specifically dealing with competence and capabilities. The phrase capability was not used in the IOSH Code document although it was considered and suggested by a few IOSH Council members. The distinction between competence and capability has been discussed in the literature (Lester 1995 and Cairns and Stephenson 2009). In Cairns and Stephenson (2009) the subject is discussed in some detail as it relates to workplace learning. Competence as a concept can be viewed as a more holistic term than capability. Capability captures the individual's ability and potential to become competent. In addition to this the Code point relating to informing employers was also supplemented with guidance that tackled exposure to novel situations in health and safety practice. In novel situations prior experience and training may not fully cover the situation in hand. In these situations the obligations would be to inform the employer and keep the situation under review as it progresses. The competency needs may then emerge at which time the appropriate advice could be sought, an extract from the guidance relating to novel situations is given below:

There may be occasions that you are asked to do a specific task that requires specialist skills or knowledge that are beyond the limits of your competence. In these circumstances you should inform the client or employer of the limitations of your competence and consider the following options;

- a) Decline the work, indicating where specific competences are required. It is recommended that you identify a suitable person or organisation with such competences to complete the work.*

- b) *Agree to carry out the work, provided it is supervised and/or peer reviewed by another suitably competent person. This maybe the best way to extend your current competences, if you desire that.*
- c) *Agree to carry out the work, but with your initial advice subject to review in the light of wider experience. This option may be appropriate for novel situations for both you and your client or employer, and where the risks to all involved are assessed and acceptable. You should make efforts to avoid such situations and learn how to minimise them, but they may be the only realistic option in certain circumstances.*

Remember that stopping or delaying work to consult others with appropriate competences is also a safe option in most cases. Working outside your competence area may have legal implications to you and the employer, and also to your continued membership of IOSH. Extract from the Proposed Code of Conduct Appendix F

Competence is a phrase widely used in health and safety literature, legislation and IOSH documentation. Its continued use in the IOSH Code was therefore felt to be appropriate. The distinction between the terms competence and capability is not widely understood among members and therefore capability is implied through the example provided in the guidance. The concept of capability is however worthy of further investigation as it relates to health and safety practice. In particular the Stephenson (1998, p.4) diagrammatic representation of capability in Cairns and Stephenson (2009, p12) provides a useful paradigm model that may have implications for ethical capability.

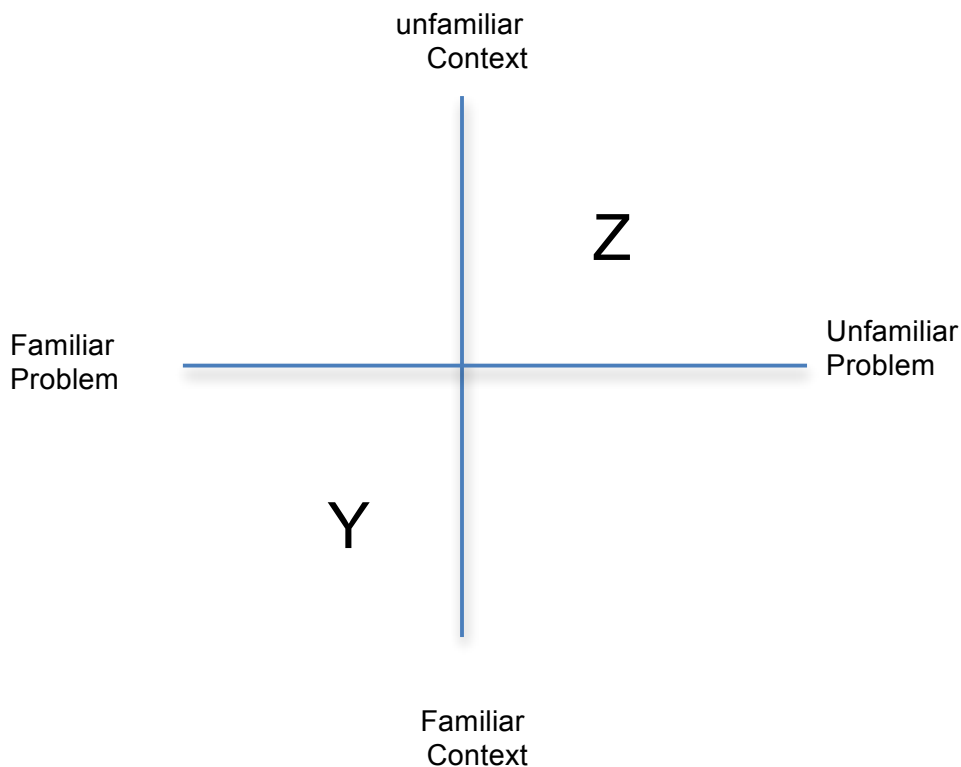


Figure 7.1: Capability Learning Plane (Stephenson 1998, p.4)

In Stephenson's model the 'Y' segments represents an area perhaps where the person is competent whereas segment Z requires judgement, continual review and a certain amount of risk taking. Cairns and Stephenson (2009, p13) refer to what Stephenson termed 'independent capability' for those operating in this segment. The same paradigm could be applied to ethical competence in identifying those situations where a health and safety professional may be confidently capable in zone 'Y' or more uncertain in zone 'z' requiring more deliberate evaluation of the situation and application of ethical decision making models, reference to the Code or other ethical case studies to develop familiarity. Initial education on professional ethics would develop ethical capability that through experience and reflective practice lead to ethical competence.

One IOSH Council member addressed the issue of members belonging to several professions:

Under Integrity - would it be reasonably foreseeable that where members are members of several professional institutions there may be conflicts of interest or conflicts of professional Codes? CM9

This raised an interesting question that was relevant to members. On the PEC alone the majority of members had memberships of other professions some of which were chartered professions. When discussed with the Committee and the EPM it was decided that the professional activity would be the defining characteristic in determining which Code of Conduct applied in any given circumstances. The problem would arise however where the professional activity involved an overlap between professions, for example ergonomics and safety or perhaps occupational hygiene. The feasibility of having a combined Code was considered however this was seen as a possible prospect at the current time but should be considered as a future ambition to avoid conflicts of this nature. The scope of the Code was also commented on:

Perhaps we should be looking at a Code that promotes good citizenship and “upright behaviour” in addition to “protecting the workforce”. I think Integrity in particular goes far beyond standards of professional activity as does respect. Leaving only service and competence as being world of work related as they are perhaps more firmly rooted in professional activity. CM10

This was an interesting comment in complete contradiction to comments raised at the IOSH Council meeting in which members felt that the IOSH Code should be limited to the professional activity. Examples of serious criminal activity were given to counter this argument in illustrating how IOSH could be brought into disrepute through such criminal activities as possessing and distributing child pornography. This is perhaps more subtle as it describes the concept of good citizenship and upright behaviour. As Koehn (1994) and Freidson (1994) imply professions are not limited to their technical area in gaining the public trust, there is an implied requirement for professionals to be examples of high moral standards as well as experts in their fields. It would seem appropriate therefore not to limit certain aspects of the IOSH Code in particular those elements concerned with character and behaviour to the professional activity. To

achieve this we re-worded the foreword to capture the scope of the IOSH Code as follows:

In scope, the Code applies principally to the activities of members as health and safety professionals. Members owe a primary loyalty to those at risk and should seek to ensure professional independence in the execution of their duties. In a profession, it is essential that members demonstrate integrity by being honest and acting fairly. Members must also avoid departing from the standards of integrity, competence and respect in their private lives in any way that could undermine public trust and confidence in the profession. Extract from the Proposed Code of Conduct Appendix F

To ensure that the obligations are at the right level of compulsion, base level modality language was required. Friedman (2005, p110) who suggests phrases such as shall, must or will are used. These were seen as slightly draconian by the PEC and IOSH Council and similar to legal obligation being somewhat threatening. The option of a single phrase over each principle area was discussed which was agreed would avoid the repetitiveness that was evident in the draft. The EPM suggested an alternative to the single verb shall by creating a verb and adjective phrase 'are required'. This was implemented into the subsequent draft for presentation back to the IOSH Council.

7.3.12 Final Presentation of the Code to Council

The revised IOSH Code was presented back to IOSH Council in February 2011. This was a less onerous session that involved a presentation by myself and a discussion with IOSH Council members in which I was supported by the EPM responding to questions. The main points to come out of the discussion are recorded in the table below:

Table 7.2: Summarised Council Feedback on Final Version of the Code with Actions

Concern / Request	Action
Negative / intimidating feel overall; Emphasise support for membership	Foreword amended so that emphasis on the Code itself being a source of membership support.
Investigation of complaints should be de-coupled from disciplinary procedure.	Definition of misconduct imported from current disciplinary procedure removed from Foreword to the Code of Conduct. Members will have chance to explain reasonableness of any actions or omissions when their compliance with the Code is queried. The PEC will present a further separate document on the investigation of complaints, as well as a revised disciplinary procedure, for consultation at the next Council meeting. It is at this stage that FAQs for member support can be better explored.
Why should members have to notify IOSH in writing of IVA / bankruptcy?	The PEC considered that in offering a proposed new Code it had to regard current Byelaws as a constraint. Under Byelaw 7 (1)(c) IVA / bankruptcy leads to automatic termination of membership. Current Code point 19 requires members to notify IOSH if they come within the provisions of Byelaw 7(1)(c). Council could accept proposed new Code point 1.3 subject to the caveat that it recommends to BoT that Byelaw 7 is amended to remove automatic termination of membership for IVA / bankruptcy. Once Byelaw 7 is amended then paragraph c) of Code point 1.3 can be removed.
Objection to the use in the guidance of contractions such like “you’ll” instead of “you will” as being too informal.	Guidance amended so contractions not used.
Code point 3.5 – not always possible to be transparent and impartial in business due to commercial sensitivity, intellectual property etc.	Code point 3.5 reduced to requiring business activity to be reasonable.
Guidance to Code point 1.2 on speeding should just differentiate between court convictions and accepting fixed penalty notices.	Guidance to Code point 1.2 edited down to delete reference to speeding endangering others. This passage has also been moved to guidance on Code point 1.3 a) on advice of IOSH solicitors. PEC still feels IOSH cannot be seen to condone speeding and that minor motoring offences capable of causing more embarrassment to a member and IOSH than say to accountants or estate agents and their respective professional bodies.

One of the most significant outcomes of this was to decouple the disciplinary procedure from the IOSH Code and create a separate complaints document. This was anticipated and concern had already been raised concerning the inconsistencies between the current disciplinary procedures and the Byelaws. This led to an additional project of rewriting the disciplinary procedures and creating the new

complaints procedures. The impact of this was to delay the final approval of the IOSH Code. The IOSH Code was approved in principle following this meeting subject to further amendments and the IOSH Council asked that a new disciplinary procedure and complaints process be presented at the next IOSH Council meeting in September. The use of contractions in the guidance whilst not commented on at the original presentation was raised following this presentation. The IOSH solicitors had already commented that the guidance was perhaps too 'chatty' and informal. The PEC disputed these claims arguing that the guidance should be easy to understand being written in a friendly casual tone to encourage engagement. The IOSH Council broadly accepted this however it was felt that contractions should be removed. One member in particular pointed to the difficulties of overseas members in reading English with contraction when English was not the first language. There was some follow-up discussion on whether a plain English crystal mark would assist (Plain English Campaign 2012). Some of guidance from the plain English website had already informed the new code by working towards brevity and avoiding longwinded code points that existed in the current Code.

There was also some dispute about the inclusion of speeding advice in the guidance. Whilst it had already been agreed that only summary convictions would require notifications the Committee still believed that speeding offences even minor ones were unacceptable for health and safety professions. It was agreed therefore that this should be discouraged by highlighting that IOSH does not condone speeding in the guidance.

7.3.13 Recent Developments Related to the Disciplinary Procedures

The IOSH Council had approved the IOSH Code of Conduct and Guidance. A further project had emerged to decouple the disciplinary procedure from the IOSH Code and create a new complaints leaflet as a way of supporting members. The completion of the project was captured in a further report to the IOSH Council by the EPM:

A Working Party (WP) led by Shaun Lundy and supported by the EPM developed a new draft Code of Conduct and guidance. These were presented

to Council as agenda item 4 on 09 February 2011. Following this, the WP has presented an updated disciplinary procedure and complaints leaflet as agenda item 14 at this Council meeting. The WP operated flexibly with every PEC member contributing at some point. Extract from the Ethical Practice Managers Report to Council 14th Sep 2011

It was at this meeting that I was also called upon to present a revised disciplinary procedure and complaints document to IOSH Council on behalf of the PEC.

Shaun Lundy presented very persuasively and Council resolved to recommend the disciplinary procedure and complaints documents to the Board of Trustees, subject to certain changes to the disciplinary procedure. Extract from the Ethics Practice Managers Report Following the IOSH Council Meeting on the 14/15th Sep 2011

Following this meeting the additional documents were sent to IOSH Solicitors for comment. The new IOSH Code of Conduct, guidance, disciplinary procedures and complaints leaflet were eventually presented to the Board of Trustees in March 2012. A brief paper produced by the EPM and me accompanied the documents and a summary of this paper and its implications are discussed below.

In September 2011 the PEC presented a draft document entitled 'Disciplinary Regulations' to the IOSH Council. This draft took account of legal advice from IOSH's solicitors in the previous two years concerning a dispute between three members. In that particular dispute all three members were both complainants and subjects: there were allegations and counter allegations. Subject to one change, which was to make the document 'costs-neutral' by removing the ability of any Committee to make any award of costs, IOSH Council approved the draft in principle, subject to further legal advice. The PEC stage at Part V of the working party's draft partly replicated provisions for the PEC stage in the current disciplinary procedure. Neither allows any appeal for the subject from a PEC decision. IOSH's solicitors, advising on the PEC's draft in February 2012, said that a PEC stage where there is no formal hearing or any right for the subject to attend or be represented, nor any right of appeal, could be challenged. The potential challenge would be "that it is unfair and /or in breach of

Byelaw 8(3) sub-paragraphs (a), (b) and (d) which apply where an allegation of misconduct' is made."

The PEC draft allowed the subject to deny misconduct at the PEC stage. As in the current disciplinary procedure this would lead to escalation of the matter to a Disciplinary Committee if the PEC saw no grounds upon which to dismiss the allegation. In both the PEC draft and the current procedure the subject has a right of appeal from a Disciplinary Committee decision to an Appeals Committee. IOSH's solicitors commented that a challenge to the fairness of the PEC stage could be defeated by pointing to the subject's ability to insist on a full hearing at the Disciplinary Committee stage. They add that this is unsatisfactory as it negates the value of a PEC stage. They see no incentive for any subject to admit misconduct on a documents-only basis. The solicitors comment further that some subjects will insist on a full Disciplinary Committee hearing even in what are relatively minor cases because they want to make oral representations and/ or preserve their right of appeal. The solicitors have proposed no alternative to retaining the PEC stage.

The overall opinion of the solicitors was that the PEC draft Disciplinary Regulations is an improvement on the current version. Unfortunately at 72 paragraphs the draft is very long and in places difficult to follow. Whether to have a PEC stage and how it should work needs to be revisited. Meanwhile IOSH should take this opportunity to make some amendments to the current disciplinary procedure. Most of the changes relate to adopting precautions against potential challenges in the Courts in light of a Court of Appeal judgment against another professional body.

As an example of such a challenge the following case was given as an example (Barnwell and Smith 2012). A student member of the Institution of Legal Executives (ILEX) successfully challenged a disciplinary penalty imposed on her by it. The student made, via an application for judicial review pleading, that there was apparent bias in the arrangements for hearings about her alleged cheating in exams. The Court of Appeal quashed the decisions of the ILEX disciplinary Committee decision to exclude the student from membership and the ILEX appeal Committee decision confirming it.

This was because both ILEX Committees involved in the case, which were exercising regulatory functions, had on them a member who also had a representative function in the governance structure of ILEX. On the disciplinary Committee one member was an ILEX Council member and director. On the appeal Committee one member was an ILEX Vice President.

It would therefore be appropriate to avoid similar bias by ensuring the relevant independence of both the PEC and Disciplinary Committees. This would include avoiding any overlap between IOSH Council members, membership of the PEC and Disciplinary Committees. Such precautions are not currently in place.

7.4 Conclusion

The final stage of the project was completed when approval was gained for the new IOSH Code and Guidance. The Disciplinary Procedures whilst improved required further work. This would involve potential changes to the Charter and Byelaws that would need to go through the IOSH BoT and possibly the Privy Council for further approval. The decision to separate the IOSH Code and Guidance from the Disciplinary Procedures permitted the furtherance of the IOSH Code despite the delay to Disciplinary Procedures.

The success at this stage was not limited to the documents alone. The name, structure and remit of the PEC had changed as a result of the development work on the new IOSH Code. Members of the IOSH Council had been positively influenced through the use of case study examples and discussions on the new IOSH Code that would otherwise not have occurred. The PEC's current processes for dealing with allegations of misconduct had also been positively influenced by the project as PEC members reflected on development of a new IOSH Code whilst still operating the existing one on live cases.

7.5 Reflection on Stage 4

This stage was the most protracted and perhaps the most difficult to control. This was largely unexpected at the start of the project where the plan was to have a

complete version prior to the IOSH Council presentation for the follow-up presentation to the Board of Trustees in 2011 thereby concluding both the IOSH and the DProf project, this was unfortunately not to be the case.

The involvement of the Council as a consultation as well as an approval body was first considered at the end of Stage 1 and agreed by the PEC during Stage two. In reflection it has been essential to involve Council and they have made a significant contribution to the guidance and format of the Code. In particular the Council raised such concerns as support for members and position of the Code as not only a tool in disciplinary hearings but also served as a guidance document for practice. This philosophy matched that of my own and was therefore reassuring. As leader of the project I found myself in the limelight formally presenting the Code, guidance, disciplinary and complaints procedure to Council on two occasions. Standing up in front of senior professional colleagues to present the work of the Committee was a daunting task, especially as their remit was to scrutinise and challenge the work. It was entirely possible that Council members would reject the proposed Code and opt to remain with the old one. I recall being nervous and recorded this in my diary:

I am petrified that the Council will reject our work. It feels as though all our reputations, especially mine are on the line. Not to mention the impact this could have on the DProf. This is definitely crunch time, time to step up and be counted I guess. Learning Diary Excerpt Sep 2010

It was here that my leadership authenticity was really put to the test. Demonstrating an authentic belief in what we had done was essential in convincing Council that they should adopt our proposals. Council were rightly critical and challenging in a constructive way. This was in part achieved by involving them in the process by engaging them in the case studies. Through this engagement Council members were also able to reflect on their own experiences and contribute to the process in a more meaningful way. By situating them in an allegation of misconduct they were able to experience the role of being a PEC member in making determinations of sanctions. This was a novel situation for most and revealed the complex nature of misconduct and opened up the grey areas of dilemmas in practice. I noted these successes in my diary:

The presentation went well and the case studies even better, approved unanimously subject to further work and consultation with the Council. Looks like I will be back again to present the updated version in Feb. The decision to involve Council in the case study exercise was a risk but it paid off. They were far more engaged after the case studies coming up with some really useful suggestions. The panel of Committee members including the EPM was an excellent way to respond to questions, everyone played a part, as it should be.

Learning Diary Excerpt Sep 2010

Transformation was happening not only in terms of changing a document but also in the minds of those involved in its development. As Chatterjee (1998, P.67) describes, transformation in an organisation will also involve transformation in the consciousness of the Leader and followers, and that this is necessary for lasting change. My thoughts on change were noted in my diary below:

Change is happening, the Committee has changed its name from PC to PEC to reflect its role on ethics, perhaps we have influenced organisational change in this direction. There seems to be a change in attitude and greater appreciation of ethically grey issues emerging in Committee members.

Learning Diary Excerpt Feb 2011

This stage was messy in comparison to previous stages. It was much more iterative and collaborative. As Chatterjee (1998) states:

...out of clutter, find simplicity, from discord find harmony, in the middle of difficulty lies opportunity .Chatterjee (1998, p.57)

What became overwhelmingly clear to everyone at this stage was the project to rewrite the Code was more than just an exercise to create a new document. It had become the driver for a paradigm change in the profession towards professional ethics. The project therefore is not yet complete. The next phase involves not only

the dissemination of the new Code and associated documents but will also involve further work on CPD, guidance, support for members and educational material to embed professional ethics into the consciousness of members and develop ethical competence in line with technical competences already in place

CHAPTER EIGHT – FURTHER DISCUSSION

8.1 Introduction

In considering what has been achieved it is worth revisiting what the intent of the professional doctorate actually is. Lee *et al* (2000) describes the professional doctorate as a process of learning to produce;

...new kinds of knowledge and new ways of producing knowledge.

(Lee *et al* 2000, p.127)

Lester expands this by describing the defining characteristics as:

...grounded in practice as opposed to academic research, and explicitly geared to the needs of senior practicing professionals.(Lester 2002, p.2).

New knowledge is necessarily rooted in this intersection between work place, professional background and the academic world. The project has certainly been grounded in practice and focused very specifically on the current needs of the health and safety professional. By underpinning the development of the new IOSH Code, guidance and disciplinary procedures with a systemic process informed by theory and current best practice a credible product has emerged. By ensuring a broad and thorough consultation process the product will be more representative of practice than if it was restricted to the views of the few. This also creates the added benefit that those consulted will also assist with the dissemination to the wider membership.

8.2 Aim, Research Question and Project Outcomes

The aim of the project was to critically discuss and reflect on the process of leading, reviewing and developing a new ethical Code of Conduct, guidance and disciplinary procedure for the Institution of Occupational Safety and Health. Several research questions were articulated at the start of the project:

1. What are the deficiencies in the existing IOSH Code of Conduct, Guidance and Disciplinary Procedures?
2. What methodological approach should be taken to develop and launch the new IOSH Code?
3. What is the nature of the ethical dilemmas and Conduct issues experienced by Professionals?
4. How do traditional and modern theories of professional ethics relate to health and safety practice?
5. What style of leadership is appropriate in fulfilling the aim of leading and developing a new IOSH Code of Conduct?

It was anticipated that the following products and outcomes would arise from the project activity:

1. A new IOSH Code of Conduct, guidance and disciplinary procedure.
2. Recommendations for a suitable dissemination strategy for the new Code, guidance and disciplinary procedure.
3. Development of a Higher Education syllabus for professional ethics in health and safety practice¹⁷.
4. Critical insight into the application of action research methodologies and leadership theory as it applies to real world projects.

In conclusion each of the research questions and project outcomes will be discussed in turn.

8.2.1 What are the deficiencies in the existing IOSH Code of Conduct, Guidance and Disciplinary Procedures?

Stage 1 of the action research cycle involved benchmarking and critically evaluating the existing IOSH Code. The guidance and matrix offered by PARN, Friedman *et al* (2005) was used as a tool to illustrate the shortcomings of the existing Code. This was done systematically and recorded to create a history of our rationale behind the

¹⁷ Prior to the start of the project in 2008 there was no syllabus relating to professional ethics or Codes of Conduct. As part of a parallel project the professional Committee published a new syllabus in 2010 that included learning outcomes on professional ethics and the Code of Conduct. The section on ethics in the 2010 syllabus was directly influenced by the Code development.

changes that were to follow. There was no such provenance with the existing IOSH Code. The benefit of having a thorough benchmarking and critical evaluation of the existing Code was to be fully realised during Stage 4 at the IOSH Council presentation where several Council members specifically asked for detail on benchmarking. It was also considered vital by the Committee to have these records for future Committees who may themselves wish to update the IOSH Code and would benefit from some prior history on how it came to be. There were some specific areas for improvement that emerged. The 19 Code points in the existing IOSH Code were long and not categorised making them difficult to recall. Even the Committee members who referred to the IOSH Code frequently when making decisions on allegations of misconduct found they were unable to recall the majority of the IOSH Code. This was also the case among practitioners who participated in the interviews who could only guess at its contents often citing honesty and competence in the main. Knowledge of the existing Code appeared limited to its existence and not at all to its contents. The IOSH Code lacked current guidance and this was missing from some Code points. There were also frequent overlaps and multiple obligations in Code points making interpretation difficult when considering allegations of misconduct. The disciplinary procedure was not evaluated at the same time as the IOSH Code and Guidance as it was considered largely fit for purpose. However, it became apparent during Stage 2, in evaluating the misconduct cases that had been heard by the Committee, that there were areas that needed addressing. In particular the link between the IOSH Code and the disciplinary procedure was too strong giving the appearance that the purpose of the IOSH Code was punitive rather than goal seeking. This was identified during Stage 1 and reinforced by members of the Council in Stage 4. The IOSH Solicitors also commented that the disciplinary procedures should ideally be decoupled from the IOSH Code and additionally from any complaints process. This prompted the creation of a complaints document that included guidance for both the complainant and the subject of the allegation. There was also some concern over inconsistencies between the IOSH Code, disciplinary procedures and the Byelaws and these remain unresolved until changes can be made to the byelaws following Privy-Council approval.

8.2.2 What methodological approach should be taken to develop and launch the new Code?

The action research approach was useful in providing a framework for the project. Each cycle became a milestone in the development process from which the reflections that followed allowed the plan for the next stage to be adjusted as required. The iterative nature of the development did challenge the action research method at times and in the early stages there was pressure to progress the written draft quickly rather than allowing it to emerge more gradually. The benefit of the emergent approach was that there was time for others beyond the development team to engage with it and contribute. It is also worth adding that this presented some educational benefits to those who may not have otherwise thought about the IOSH Code. As has already been mentioned knowledge of the IOSH Code appeared to be limited to its existence. At the start of the project there were more action research cycles than in the final version. These were refined as the project progressed. Stage 3 naturally overlapped with Stage 2 and 4 as concurrent work on the Code continued as I conducted interviews as part of the wider research on professional ethics. The contribution of the interviews was not limited to the Code development but rather provided experiential insight into the ethical practice of members that will help underpin the future dissemination of the Code. It also revealed some gaps in ethical competence. There is also benefit in recording the process in this way as it provides a useful document from which to reflect on in the future development processes. The process was emergent in nature, I was reluctant to impose too rigidly a structure for the development that would go against existing organisational structures. In the early stages we formed a working party to deal specifically with the Code development from Committee members but this naturally reverted back to involve all members of the Committee. We used the Council not only in its official capacity as an approval body but also as part of the consultation mechanism which enhanced the Code, in particular the guidance and help to create wider ownership of the document beyond me and the EPM. Flexibility was the key to the project's success, without this it could have stalled or diverged from its original intention. Flexibility was also important for those involved in the process and any anxieties over progress were tackled by providing detailed updates to the Committee as evidenced in the minutes of various meetings.

In answering the research question as to what methodology is appropriate it can be argued that there are many approaches that could have been taken, however the benefits of the action research approach to real world projects are clear. The action research approach has many applications in the real world beyond its traditional application to educational research and development. It has the scope to include both qualitative and quantitative methods of data collection and can be adapted to fit existing organisational structures and consultation processes, rather than sitting on the outside as with many traditional research approaches. It also allows development in real time in parallel to data collection and analysis, with the added benefit of including insider researcher insights through critical reflection.

8.2.3 What is the nature of the ethical dilemmas and Conduct issues experienced by Professionals?

There was little evidence of true dilemmas, however ethical issues do arise in practice. There was awareness among health and safety professionals of misconduct issues and examples were provided that fell within the grey area of misconduct as discussed in Stage 2. Beyond the ethical issues of breaking the law most of the interview participants in Stage 3 had trouble recounting ethical issues in practice. There was some focus on competence as an ethical issue in terms of making the employer aware of the level of competence and not working beyond your competency. Some interesting examples were presented on practice related problems including exaggerating risk to prompt action. This was an example of a dishonest act that was justified for the greater good, in other words a utilitarian approach to decision-making rather than a deontological one, that in turn conflicted with the virtue of honesty appearing in the Code. Other examples related to virtues of honesty or integrity with a focus on compliance with the law as a starting point. This perhaps points to a lack of ethical competence on the part of the health and safety professional. In particular there was a gap in knowledge of the existing Code and how this related to practice.

In reviewing cases of misconduct a simple paradigm model was developed in Stage 2, shown in figure 8.1 below, this was used to contextualise the ethical/legal divide that became apparent when reviewing the cases.

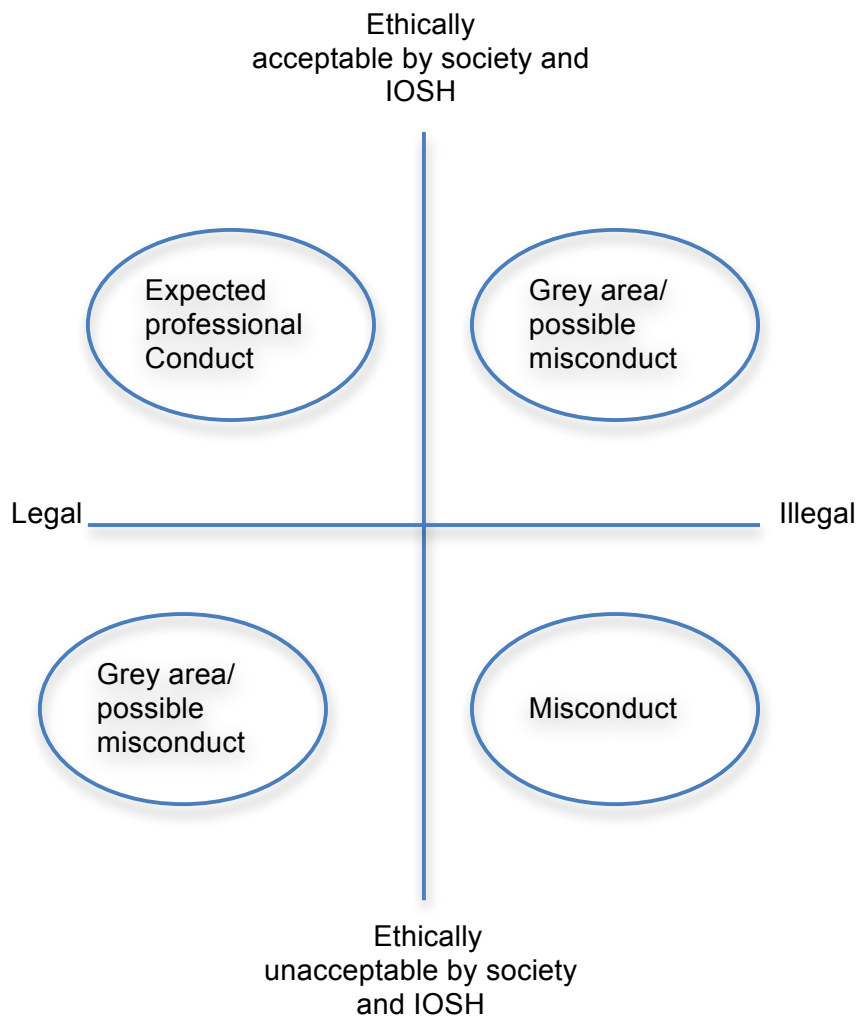


Figure 8.1: Legal/Ethical Paradigm Model

The model provides a useful educational tool that along with the capability learning plane as described by Stephenson (1998, p.4). Figure 8.2 below can be used to assist practitioners in their understanding of how ethics relates to the real world environment.

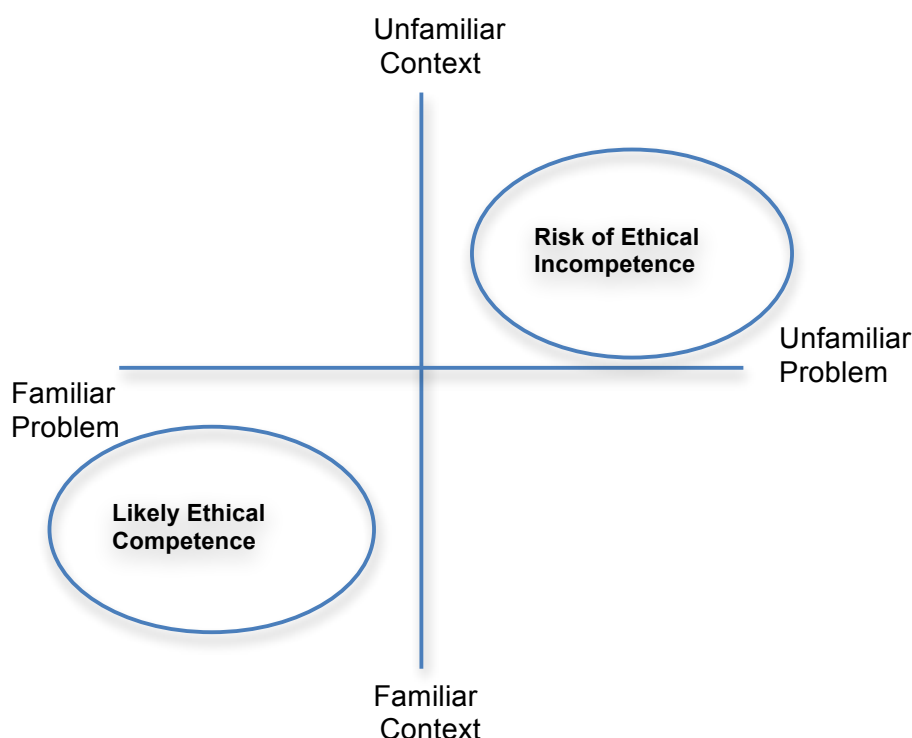


Figure 8.2: Adapted Capability Learning Plane

In the adapted model I have replaced Stephenson's X/Y labels with zones indicating where there may be both a risk of ethical incompetence and also likely ethical competence. I have used the term 'likely' as it is not certain that familiar problems and circumstances will always result in ethically correct courses of action. This acknowledges the experiential dimension of competence. Both models could be applied to ethical case study exercises to help develop an appreciation of their own levels of competence as it relates any particular situation. Whilst also being used to address the knowledge gaps identified and improve the understanding of the Code of Conduct as it relates to a variety of practice settings.

8.2.4 How do traditional and modern theories of professional ethics relate to health and safety practice?

Knowledge of ethical theory and the use of ethical language were not evident during the project among the majority of participants. This is hardly surprising, as ethical education has not been evident in any previous health and safety syllabuses. The experiential examples provided during the Committee and by practitioners

participating in the interviews hinted at ethical virtues, principlism and consequentialist thinking although there was little awareness of these concepts. There was a tendency for many to reduce professional ethics and Conduct to legal matters or technical rationality rather than accept the ethical complexity of practice. Experience has played a large part in the ethical competence of the majority of professionals involved in the project. This has developed a degree of ethical confidence that is unfortunately not necessarily underpinned with ethical knowledge leaving the extent of ethical competence uncertain. Ethical competence is a necessary component of general competence as advocated by Friedman (2007) and as Kass (2001) states it can have a positive effect on how professionals practice:

“Engaging in the steps of an ethics analysis makes us meticulous in our reasoning, requiring us to advocate interventions on the basis of facts and not merely belief.” (Kass 2001, p1782)

Several paradigm models have been presented and discussed throughout the project. These have future implications on education and CPD, providing the ground for further development in both these areas. The ethical theory paradigm model on p.36 figure 2.5 was based on the established literature. It represented a hypothetical development transition from ethical theories including societal laws to pragmatic ethics and finally phronesis. The zone around the outside represents a fragmented approach to ethical decision-making where the professional consciously or unconsciously occupies a particular zone predominantly when addressing ethical problems. It was apparent during the interviews that awareness of ethical theories as they relate to practice is sparse and the majority of participants predominantly started in the societal law segment with occasional ventures into other ethical segments articulated through experiential examples rather than explicit reference to the theory. As an update to the model, figure 8.2, the zones have been highlighted and labelled novice, competent and expert to provide a structure for ethical competence. The Phronesis zone indicating practical wisdom where practitioners become intuitive in their ethical practice

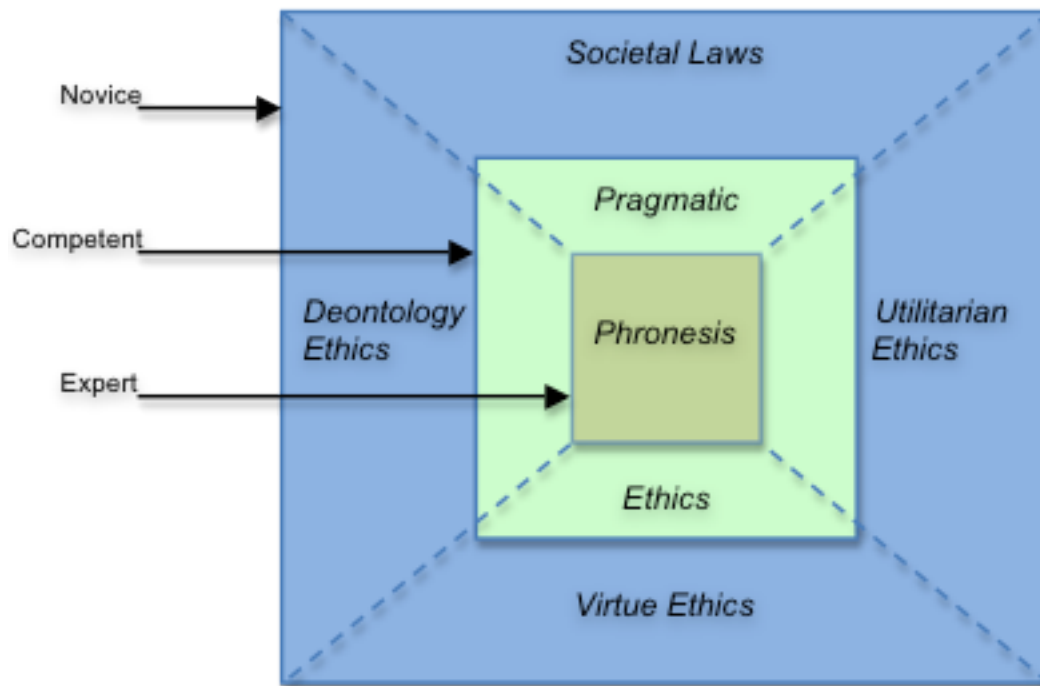


Figure 8.3: Updated Ethical Theory Paradigm Model

Again this has value in educational settings in providing students with a frame of reference in which to evaluate themselves and others in dealing with ethical issues.

8.2.5 What style of leadership is appropriate in fulfilling the aim of leading and developing a new Code of Conduct?

It was initially difficult to anticipate the degree to which organisational change would occur in IOSH and in the wider profession. The initial proposal was to review the existing Code and develop a new one. My intuition, influenced by my previous observation that ethical education was lacking, led me to believe that the project would have some profound influence over the profession and prompt further policy change in this area. This was proved to be the case over the duration of the project. As the project developed new areas for attention emerged that were connected to the area of Conduct and professional ethics. This was essential; it was also both positive and negative. Positive, in terms of creating the framework for change needed for a more holistic approach to professional ethics. Negative in terms of creating a lot more work than first anticipated, which in turn delayed the project by over a year. I have visualised this as ripples in a pond created by the original proposal and subsequent work therein, shown in figure 8.4 below.

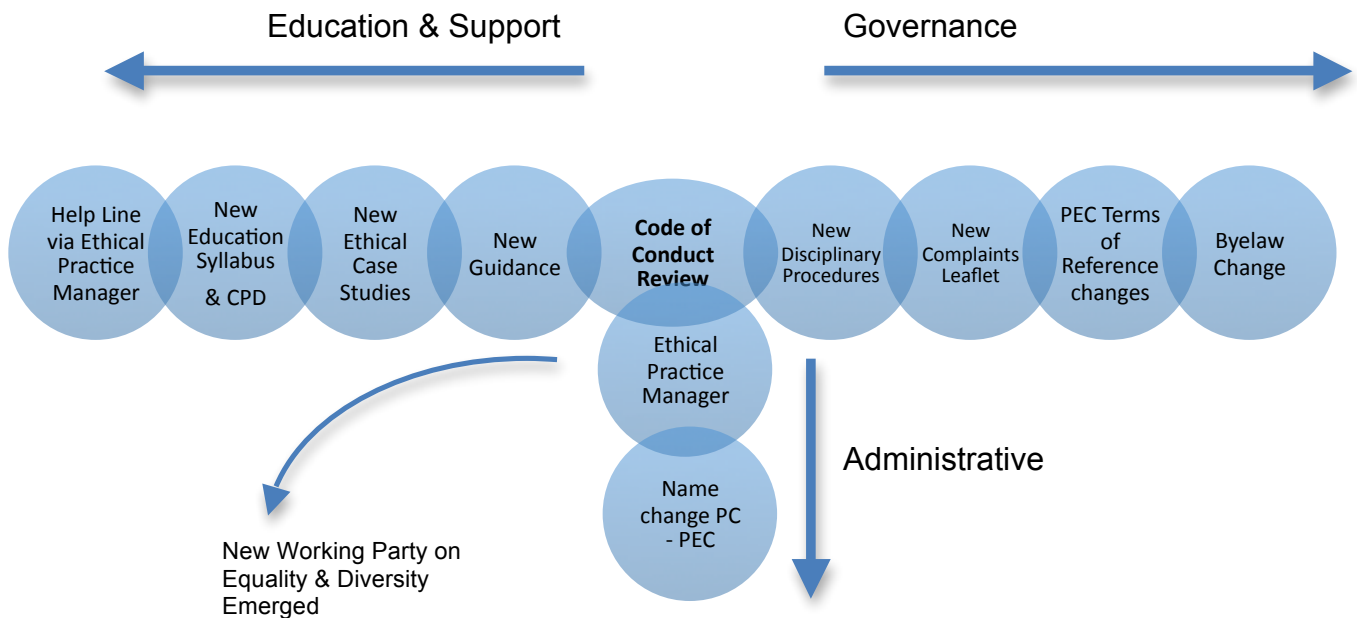


Figure 8.4: Contextualised Ripple Effect and Influence of the Project

Although I led the original proposal new champions were identified to take on various new projects as they emerged. As an example the equality and diversity working party was created to focus specifically on this area of policy as it affected IOSH and its members. In parallel to the project the higher education syllabus was reviewed and influenced with the inclusion of professional ethics as an explicit requirement for the first time. Future influence is likely to continue with the creation of CPD that includes reference to the new Code and ethical decision models that are yet to be agreed. As a profession there is still much to do, recent government reviews of health and safety have hinted at professional Conduct issues that have potentially underlying professional ethical issues not yet fully understood (Young, 2010 and Löfstedt, 2011).

Those contributing to the process, as followers were unique in that they had a high degree of competence with significantly varied experience. Kelly (2001, p.151)

describes these types of followers as 'star' followers who demonstrate several distinct characteristics such as being technically competent, in control of their destiny and possessing the ability to disagree agreeably. Adopting the correct style with 'star followers' was essential to ensure that contributions remained constructive and credibility was maintained. It was considered unnecessary to have an overly controlling hand that may have been necessary with less able followers. The authentic approach in which Avolia *et al* (2004, p.4) describe as an awareness of others' values and morals as being an important component, was especially important in maintaining trust. Avolia *et al* (2004, p.4) go on to describe other character traits such as confidence, resilience and moral character as also being important in an authentic leadership process. All these featured strongly in the approach taken. The process of transformation was not immediately obvious to those on the Committee. In the initial stages it was merely a document transformation that was necessary, however as time progressed it became clear to the Committee and later the IOSH Council that this was the beginning of a wider organisational and profession change that had potentially far reaching consequences. The connection with the media coverage and government attention on health and safety was also not immediately apparent, however again this is beginning to emerge and will continue to develop as the Code is disseminated to members. It is also apparent that the new Code of Conduct and the professional ethical framework that is emerging around it will have a positive influence on the public perception of the profession.

A certain amount of leadership stamina was required to maintain the progress against unanticipated barriers. My initial instinct was that the process was going to be longer than first planned in 2008. This was proved to be correct and the tactic of allowing ideas to emerge at a more natural pace rather than forcing things through was beneficial despite being frustrating at first. On numerous occasions I reminded Committee members that the Code had not been reviewed for almost 15 years and therefore an extra 6 months getting it right was in my view time well spent.

In addition to the requirement for leadership stamina, there was also the underlying tension that existed between me as leader of the project and the Chair as leader of the committee. This presented a challenge in maintaining my authority for the project and created a considerable degree of anxiety, some of which I have reflected on in

the relevant stages as these anxieties emerged. The background literature on leadership provided a theoretical underpinning from which I was able to adopt the most appropriate leadership style. My intention was to be transformational and authentic as a leader rather than autocratic and controlling. In this way my approach was to maintain my authority by establishing a degree of expertise in the area and using this to create some credibility in the work that was being produced. This was a risky strategy and the anxiety persisted, as I feared losing the project and thus the topic of the DProf project as a whole. I countered this anxiety by forming a constructive relationship with other members of the committee, including the Chair and also working closely with the newly appointed ethical practice manager on technical details. This created a team approach which was useful in generating debate and creating an atmosphere where settling on decisions as to what should and should not go into the Code was easier. This complex inter-relationship of leadership styles and approaches between me and the Chair of the committee raises some interesting possibilities for further study in the areas of organisational change and leadership theory. In particular it highlights the otherwise hidden challenges of leading a project such as this within a formalised committee structure and perhaps though my reflections hints at the most appropriate leadership approaches to manage those challenges.

There was also no clear ideal form for what a Code should look like, as Friedman (2007) points out Codes should be designed so as to match the professional activity rather than conforming to any particular structure. On this point, the new Code is certainly a better representation of the professional activity. The guidance is up to date and by decoupling this from the single Code document, there is now the opportunity to update this more frequently, without the need to go through the bureaucratic process of approval that has been the frustration of the current development process.

The process of consultation has reaped two-way benefits. The input of the PEC, IOSH Council and practitioners involved in the interviews has undoubtedly made an essential contribution to the development process. Without this the Code would have been one dimensional, originating predominantly from the mind of the project leader. By letting go to some extent participants in many cases have taken some ownership

of the development and therefore made more valuable contributions. This was particularly evident at Stage 4 where Council members were implicitly invited to become part of the development process. This was achieved by engaging with them through the case studies, and then by inviting them to contribute to further developments. This is analogous to the problem of engaging managers in health and safety systems; experiential learning has taught me that often there is limited positive engagement. However if an accident happens in their team the experience often prompts intense interest and ownership of health and systems for these managers. This creates a dilemma for many health and safety professionals as to how to create this effect without having the negative consequences of an accident first. By creating accident scenarios and getting managers to experience the negative impacts of accidents through engaging with the scenarios a similar effect is achieved. In the same way the ethical case study exercises achieved engagement of IOSH Council members in a similar way.

8.3 Product Outcomes

8.3.1 A new Code of Conduct, guidance and disciplinary procedure

The Board of Trustees approved the new Code of Conduct, Guidance, Disciplinary and Complaints procedures on March 2012. In this regard the project has been a complete success. From the outset the project was not merely confined to the production of a document, it sought to create a lasting paradigm change at a time of increasing scrutiny on the profession. With this in mind the project is still on-going with many outstanding issues to address, such as the dissemination, education and CPD aspects, all still requiring attention. It is important to acknowledge the limitations of the new Code, as Ridley *et al* (2001) states:

“...ethical Codes have many limitations, the most serious perhaps being that they tend to reflect the dominant culture’s values at the expense of minority values.” (Ridley *et al.*, 2001, p. 186)

The new Code will therefore require continual review to ensure it remains fit for purpose and inclusive, not merely a representation of the dominant. To aid this the

guidance has been decoupled from the main Code document to allow it to be updated as the Committee hears new cases and new experiential examples are raised from practice. There is therefore an opportunity to carry out further research in this area. The profession's continued review of its ethical practice is necessary at a time when it continues to find itself under the spotlight. As Spada (2009) states professions have an important role to play in society:

“The professions have played a big role in the development of meritocracy because of their emphasis on knowledge- based skills rather than social class. The professions are a potential source of ethical role models via promulgation of professional standards, ethics and morality in business, government, and civil society.” Spada (2009, piii)

To remain ethical role models for health and safety practice the profession needs to have a clear strategy for developing and maintaining ethical competence in addition to general competence.

8.3.2 Recommendations for a suitable dissemination strategy for the new Code, guidance and disciplinary procedure

There have been several suggestions to emerge throughout the project. Enhancing the Web presence for professional ethics has already been achieved and this could be further developed by including some ethical case studies along with the launch of the new Code. The 4 principles from the Code, integrity, competence, respect and service are to appear on membership cards and literature sent out to members on renewal of their membership as a reminder of the core principles of the Code. The EPM has been providing a help line for support for members on Conduct and ethical issues which has emerged as a result of the project. Presentations for branch meetings are to be delivered by members of the Committee. This has already been piloted at some branches and will be continued when the Code is officially launched.

Further work is required on CPD, case study development and ethical decision-making models. A proposal for an ethical decision making approach has already

been made based on the review of literature and experiential learning during the project. This is shown in figure 8.5below:

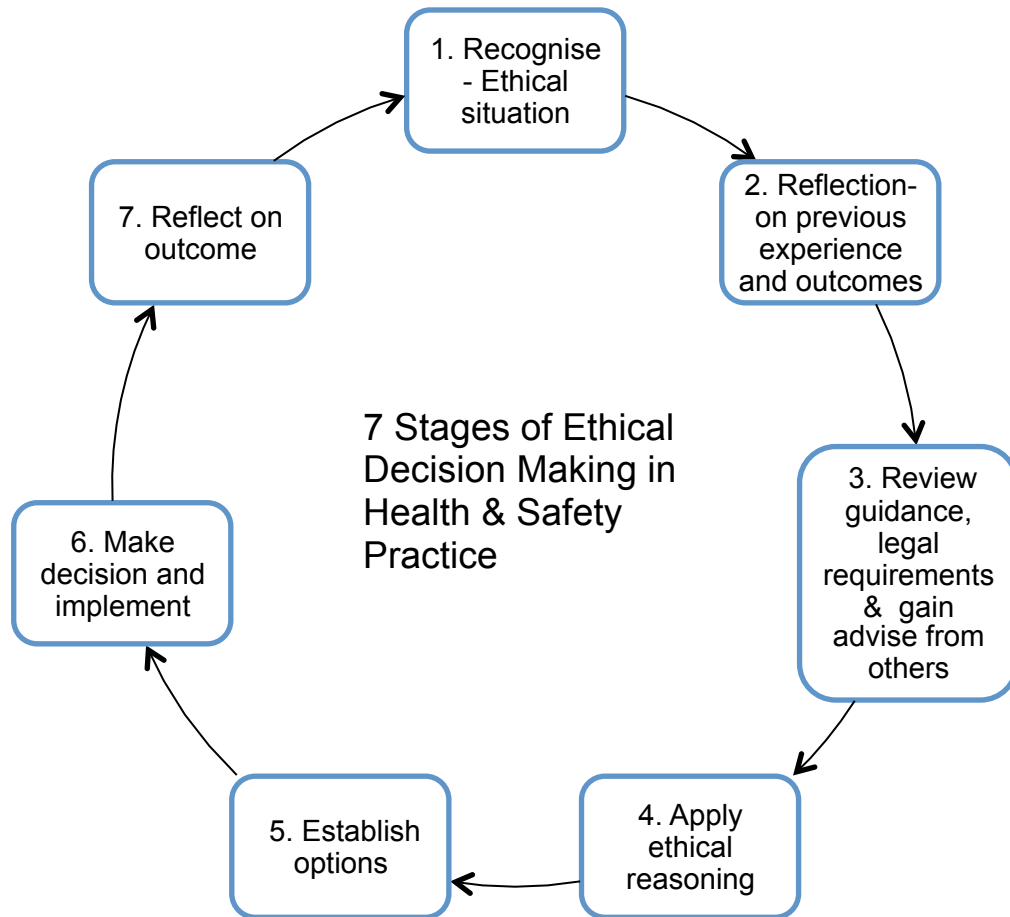


Figure 8.5: Proposed Ethical Decision-Making Model

This may be incorporated in the additional guidance and CPD courses in the future.

8.3.3 Development of a Higher Education syllabus for professional ethics in health and safety practice

As a result of the project the educational syllabus has been updated to include professional ethics as an explicit learning outcome. Several models have been proposed that provide a framework for education and future CPD. In Stage 4 the

subtle difference between capability and competence was introduced to identify where potential issues with competence and unfamiliar situations may arise. Using the concepts of novice, competent and expert from ethical paradigm I have also proposed a trajectory for ethical competence, figure 8.6, that incorporates base capability through to the proficient expert and phronesis.

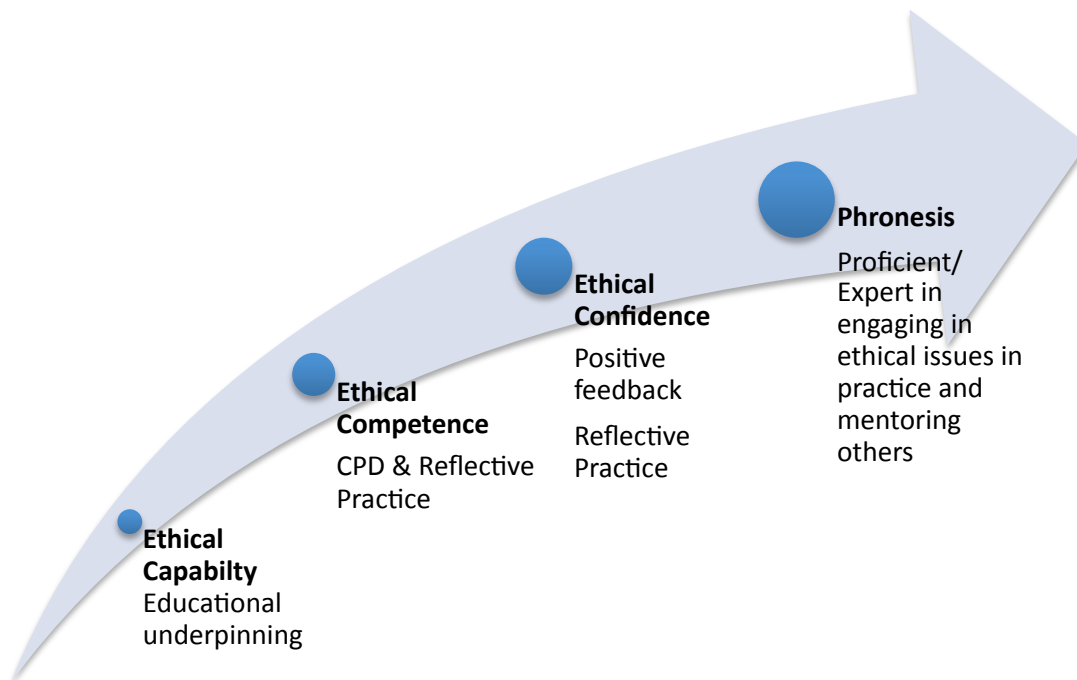


Figure 8.6: Proposed Ethical Competence Trajectory

The development of ethical competence will make valuable contribution to practice and as Schön (1991, p.14) points out there is often a mismatch between professional knowledge that is largely technical and the changing characteristics of the situations of practice. Practice is complex, uncertain at times and has uniqueness often not covered by prior learning and practitioners may find themselves relying on intuition to solve problems that they encounter. It could be that future versions of the Code acknowledge ethical intuition in recognition of the underpinning ethical education that has occurred. Models of professional learning as discussed in Atkinson and Claxton (2000) are increasingly including intuition as a way of knowing that has, amongst other things, particular relevance in helping practitioners deal with complexity.

The concept of ethical confidence is introduced here to acknowledge the transitional stage between the ethical competent professional and the proficient expert on ethical

issues. At present this framework does not exist and it is therefore only a proposal at this stage to provide a starting point for further research and the development of teaching materials and CPD.

Ethical education is clearly needed and there perhaps is an opportunity to utilise the structure of other allied health professions such as nursing or medicine who have more experience in providing this. As Hanson (2005) discussed there are many examples of this where ethical teaching of nurses and doctors is done together. Given that many health and safety professional are also members of other professions there is perhaps an opportunity to combine ethical knowledge with for example the legal, engineering or medical profession.

Those that have participated in the project have clearly been educated in aspects of professional ethics that would have otherwise eluded them. The apparent gap in ethical competence has reaffirmed the necessity for ethics to be included in the higher educational syllabus and for the requirement for CPD in this area. The syllabus was published in 2010 and future CPD strategies have yet to be decided on, but it is anticipated that this will form part of the dissemination strategy after the documents have been approved.

8.3.4 Critical insight into the application of action research methodologies and leadership theory as it applies to real world projects

Time was a limiting factor. Being a volunteer to the Committee whilst also having a day job and meeting the demands of the DProf programme was a significant challenge. Meeting the needs of the programme and meeting the needs of the project were not always congruent. I felt the conflict acutely at times especially when the chair of the Committee articulated some dissatisfaction with the progress of the project. The perceived delay was a consequence of the highly consultative approach taken. The benefit of this approach was to ensure that the proposed Code had been widely consulted on and influenced by a broad range of professionals. A positive outcome of this was that those consulted were influenced by its content through deeper participant engagement, this in turn should have longer-term benefits in the subsequent dissemination of the Code, especially at a time when the professionalism

of practitioners is under scrutiny. The negative aspects of this wide and detailed consultation were the obvious slowing down of the project. Reaching a consensus on the content was also challenging however by clearly demonstrating the extent of, for example, the benchmarking exercise along with the broad and detailed consultation undertaken, Committee members and Council members began to trust the process explicitly by offering their support and approval of the project outcomes.

Unanimous consensus on the contents was never achieved, however unanimous approval was achieved. This perhaps indicates the trivial nature of final disagreements in specific content and the broader consensus on the approach and general philosophy of the new Code. This was helped by the separation of guidance from the Code allowing the guidance to be more freely updated as practice developed and experiential learning by those handling allegations of misconduct grew to allow it to be incorporated into the guidance. The separation of the disciplinary procedure from the complaint procedure also allowed for developments in the complaints procedures as a less formal document without the need to go through protracted Council approval.

This separation of documents into the formal and less formal will be taken a stage further as case study examples are launched on the web site. This will be a way of engaging members in real world examples that relate not only to the Code but also to ethical issues commonly encountered in practice. The semi-structured interviews have provided a useful foundation for this and it is anticipated that more such interviews will be used in the future to gather more insights into professional ethics in health and safety practice to build on this work.

In my experience projects involving the development of policy in the workplace often occur through a combination of ad-hoc feedback and intuition on the part of the person leading it. Time lines are often guesses rather than thought through estimates based on the realities of gathering sufficient underpinning evidence. The realities of project development in the real world are that stakeholders are interested in the final product and not necessarily the underpinning research and rationale that have gone into it. To meet the requirements of a professional doctorate however it is essential that significant attention is given to the underpinning rationale, research

methodology, theory and reflection on the process. Inevitably there is tension in the real world in satisfying both requirements that has been stressful for the real world researcher.

The conflict between the needs of the various stakeholders, including that of the DProf candidate, was complicated by the dynamics of the transformational leadership process. As the Committee member leading the project I had to contend with several complexities that created dilemmas of their own. As a volunteer on an IOSH Committee, work is often done in my spare time in addition to my routine work responsibilities at the University as programme leader. This limited time available for both the development work and underpinning research needed to achieve suitable product. This was resolved by the appointment of a full-time ethical practice manager at IOSH with whom I began working collaboratively on the project. Whilst this was welcomed it also added an extra problem of re-positioning myself as more of a strategic leader of the project rather than project manager which was a role gradually taken up by the ethics practice manager. The uncomfortable dilemma in this was that of letting go and allowing the project to evolve rather follow a distinct path.

One interesting observation on the functioning of the Committee was that when reviewing allegations of misconduct this was often done in a group. By this I mean that papers were sent to Committee members in advance to read and then the Committee would come together usually in person and sometimes by phone to discuss their decisions. The chair would start the proceedings by asking someone to start and after a pause someone would volunteer to give their opinion on the case, followed by others in no particular order. Consensus was reached following a discussion and it was put to a vote. I monitored the outcomes of this process that I was obviously a part of, and as part of this process I never offered my deliberations first, always waiting for someone else to begin. There was no single dominant member of the group and generally decisions as to whether the Code had been breached or not was easily arrived at. More complex discussions related to the sanctions. On reflection I became aware of the possible analogy to the phenomena 'group think' (Janis 1972). Janis (1972, p.9) discusses how group pressure can lead to mental inefficiency, lack of reality testing and deterioration in moral judgement. Janis goes on to highlight that a group is particularly vulnerable when the members

come from a similar background and there are no clear rules for decision-making. Some of these features appeared to be analogous to the PEC and by allowing a member to present their verdict on a case verbally to other members there is perhaps a risk that this may change their opinions. Without any prior written evidence of a deliberation in advance this is extremely likely. A strategy to avoid this would be to get members to commit to a decision and submit this in advance of the meeting to the ex-officio member, namely the EPM who could monitor any deviation to ensure that no one individual is dominating the group and skewing the decisions that arise. Although there is a risk of group think I did not observe any of the features of this phenomena arising, even without the prior submission of decisions. The starting member was different each time and differences of opinion did arise with each member being confident enough to argue their case if needed. The disciplinary procedures also served as guiding rules to prevent any immoral or inappropriate courses of action. It remains however an interesting phenomena to consider in any decision-making Committee where individual, independent decisions are required to ensure fairness. The requirement to present written deliberations on allegations of misconduct to the EPC in advance of meetings has been proposed to prevent issues relating to potential group think from occurring.

8.3.5 Emergent Professional Ethics Review and Development Model

When reflecting on the methodological steps, leadership processes and transition from a degree of disorder to order in our understanding of professional ethics and health and safety practice, it became evident that a model had emerged from the work in addition to the defined products already discussed. The proposed model, captured in figure 8.7 below provides a summary of the 3 areas of reflection, namely leadership, methodology and complexity. A paper on complexity by Geyer (2003) proved to be a useful stimulus in conceptualising the processes involved as a complex system rather than a linear one. Complexity theory is defined by Johnson (2007, p.8) as:

...the study of the phenomena which emerge from a collection of interacting objects.

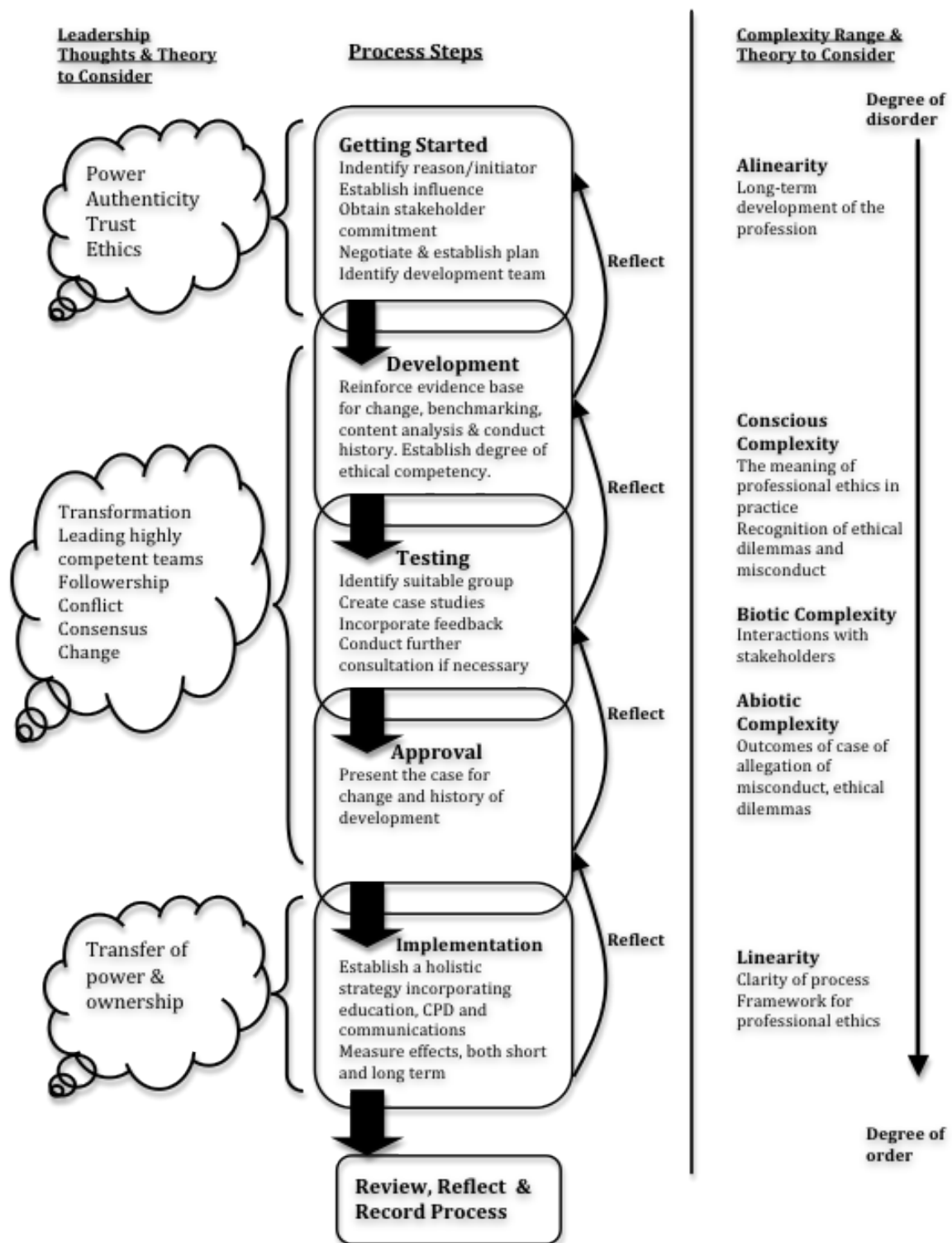


Figure 8.7: Professional Ethics Review and Development Model (PERAD)

Complexity leadership theory is already posited in much of the academic literature in which leadership is seen as an emergent event rather than something that is done

specifically by an individual (Drath, 2001; Meyer et al., 2005). In this context ethical practice could be viewed in the same way, as an emerging event that arises from a collection of interacting practice and theoretical positions. The ethical landscape of practice is therefore complex and in order to develop a new Code and new processes around it the complex systems requires some investigation. On the complexity side of the model and using Geyer's (2003) structure, alinearity is used to describe the more disorderly end of the spectrum, which is suggested as the theoretical starting point of the process. In our case this is articulated as the long-term development of the profession in which an ideal profession could be visualized, but would probably not bear any relationship to the one that actually emerges due to the inherent complexities of the system. At the other end of the spectrum is the more orderly situation or linearity where things are more stable. In this case the clarity of the process and the framework for professional ethics will be defined and underpinned with evidence therefore making it more robust in outcome. In the middle of our process is the core activity of the research undertaken to understand some of conscious, biotic and abiotic complexities such as the meaning of professional ethics in the context of health and safety, interactions between people in the system and the existing processes that determine the outcomes of allegations of misconduct. These core complexities provide fertile ground for further research to underpin practice.

Health and safety practice is complex and therefore ethical considerations within practice are likely to also be complex. Through greater understanding of these ethical issues the profession can provide more informed pertinent guidance to support health and safety professionals whilst also ensuring that the framework to regulate the profession is fit for purpose. Through the process of developing the new Code a move towards more order has been achieved within the complexity range. The centre of the diagram in figure 8.7 shows the process steps as they occurred. As a real world research project it was difficult to predict all the steps in advance, beyond that of having an action research framework to work within. To stick too rigidly to a prescribed process would have been impractical. The steps detailed here reflect the process as it emerged and in doing so provides a useful example for others to follow.

Finally the leadership approach has been captured as it relates to specific theories of leadership that emerge and have been discussed as reflection during the pro

CHAPTER NINE – CONCLUSION

9.1 Final thoughts

To put the magnitude of the project into context I have provided some crude quantification on the work carried out. Over the duration of the project I have received over 350 emails regarding the Code, these consisting of communications between Committee members, the EPM and Council members. Between Jan 2008 and Jan 2012 we have had 11 one-day Professional Committee/Professional Ethics Committee meetings relating to the Code. In addition we have also held 3 virtual meetings by telephone. I have also had 5 separate one-day meetings at IOSH with the Ethical Practice Manager.

I have presented to the Council on two occasions including an extended session involving case study exercises and panelled discussion. I have also presented on the subject a further 5 times, including to the Society of Risk Analysis in Boston and subsequently to the IOSH Chilton and Hong Kong branches, also at the Middlesex University postgraduate summer conference. I have also interviewed 20 health and safety professionals including five as part of the pilot study. I have collaborated with the EPM on producing 5 papers to IOSH Committees concerning the Code and presented 4 draft versions prior to final submission to the Board of Trustees in March 2012. In all, over 87 individuals have directly contributed to the development of the new Code and guidance.

As previously mentioned the research on professional ethics as it relates to health and safety practice is extremely limited. The empirical and experiential evidence gathered during this project will make some contribution to the body of knowledge in this area and hopefully provides a basis for further research. The development of the new Code, guidance and disciplinary procedures together with the associated developments that emerged during the project will have significant influence on practice. The critical reflection during the process has had an enormous influence on my approach to leadership and practice. The improvement in my conscious understanding of professional ethics, leadership and processes of change has been profound. I have developed a deep understanding and appreciation of how theory

and research methodology can contribute positively to practice, and be undertaken by practitioner to inform policy and change.

The project was complex and involved a significant amount of work in maintaining communications, filtering information and in the analysis of information to inform the Code development. The EPM in this regard was an enormous support in terms of administration and technical guidance. This allowed me to lead the project without getting overwhelmed with information.

9.2 Limitations

The approach taken to review the existing IOSH Code and develop a new Code was not perfect. There are undoubtedly other approaches that could have been taken to achieve a similar outcome. Time was a limiting factor especially when the organisational expectation is that the document can be produced in a shorter time frame than the underpinning research demands. There was a continual challenge throughout the project to ensure research rigor whilst at the same time meeting the real-world demands of the professional body. To some extent, on reflection, there is an implied limitation in the approach that the research demands were not sufficiently communicated to the organisation when making the proposal. To avoid this conflict it may have been better to conduct some of the underpinning research ahead of making the official proposal to the Committee to avoid any perceived unnecessary delays in progress. The conflicting leadership roles between the Chair and myself as leader of the project have been critically discussed in Chapter 8 and during the reflections following each stage, and whilst the outcome was positive there were perhaps lessons to be learned for future leadership roles in avoiding potential conflict through the use of more clearly defined boundaries at the outset .

The project description is to a large degree based on my interpretation of events as an insider researcher. There is inevitably the risk of bias in the interpretation of those events. It would be interesting to repeat the project to validate the approach, however this is an unlikely scenario for this type of project due to the complexity of both components. Nevertheless the reflections and critical evaluation of the project throughout does provide a useful example for other to follow in tackling similar real world projects.

As a health and safety professional with an initially limited academic knowledge of philosophy or ethics, the literature presented a challenge as well as an opportunity to enhance this knowledge. There are limitations in the literature review and on reflection there was a focus on western philosophy with the exclusion of eastern philosophical perspectives. As IOSH becomes an international brand and expands its membership to include the Far East this is an area that deserves further study to ensure the continued relevance of not only the new Code but also any education or CPD that is developed in the future. There is an opportunity to continually develop my understanding of ethics as it relates to health and safety practice by further developing the literature in this area along with further research into practice based issues which I am keen to take.

The project itself exceeded the anticipated time allotted, due to the unanticipated complexity of the consultation process. This delayed the final approval of Code and its launch. The unanticipated delay was both positive and negative. On the positive side it meant a thorough and robust consultation process was assured which led to wider participation than initially planned and a better final product. On the negative side it created an enormous degree of anxiety for me a leader of the project and potentially put at risk the successful completion of the DProf programme of study.

If I were to tackle this project again I would probably choose to have a greater degree of separation between the research and development. By having this separation it would have been possible to have a clearer step off point for the DProf programme whilst allowing the development of the Code to continue should the situation arise due to factors beyond the control of the researcher/leader of the project, as was the case in this project. The risk of delay and ultimately failure in meeting the project aims were not clearly anticipated at the start of the project. This reinforces the importance of doing a thorough risk assessment at the start of any professional doctorate to better understand and manage these risks. In this case it was difficult to anticipate these risks as there were no other published examples of other professional body's experiences of going through a similar process. This perhaps points to an opportunity to publish the project as a case study for other to use.

9.3 Application to Wider Practice

The work undertaken in the project provides experiential insight into reviewing and developing a Code of Conduct that may have applications to other professions considering reviewing their own Codes. Although not substantiated, it is likely that the level of rigor documented here during the review and development of the IOSH Code is unmatched in other professions. As a case study example in the application of the PARN matrix in analysing Codes, it reveals the usefulness of the matrix in identifying the gaps in existing Codes as a basis for developing new Code points or guidance. Benchmarking proved to be a particularly useful component of the process with information gathered at during this phase used in the final stages of approval as a way of reaffirming the necessity of the changes as well as providing valuable cross-correlation to the standards applied by other professions. The extensive consultation, whilst difficult and time consuming, proved to be enormously beneficial in creating an organisational change as well as a document change. This transformational change in the profession during the course of the project is perhaps one of the most important learning points. Had the research been conducted separately and independently from the committee and IOSH as a whole it may have been successfully used to create a new Code document, but would not have had the transformational effect of a fully immersed and participative process. By involving as wider group as possible organisational changes were possible through the education of the participants.

The emerging model in figure 8.7 provides a useful framework on which other professions may wish to plan the review and development of their own Codes of Conduct. The identification of stages along with the leadership approaches and complexity range provide a unique visual representation on which to imagine any process of a similar nature. The flexibility of the action research cycles means that extra cycles could be introduced where necessary to accommodate additional stages of consultation or underpinning research. For example, with time permitting, a survey of the wider memberships' opinion could be sought through the use of questionnaires, an approach considered but not taken in our project. Another area for consultation which was not taken, but could be considered by other professions, is seeking the opinions of both the public and employer stakeholders. As a final stage in

the action research cycle following on from implementation, there could be a post implementation review stage. This had been planned following the implementation of the new IOSH Code but ultimately fell outside the time frame of this project.

The content, structure and presentation of the new IOSH Code may also provide a useful document for other professions to use in their own benchmarking exercises. The use of ethical principle headings to organise the IOSH Code and make it easier to recall for members is a definite improvement on the previous version and something that all codes of conduct could benefit from. Arguably these headings could be generally applied to the majority of professions with perhaps a few exceptions. The simplification of the Code points and the separation of them from the guidance allows for the further development of guidance as new knowledge of practice emerges, without the need to revise the entire document, giving the Code a longer life. The guidance itself has been written to be more practice focused and less abstract with modern examples provided where appropriate. This focus on ensuring that the guidance was as pertinent as possible is something all professions can benefit from. In particular other professions should consider doing more thorough underpinning research to gain meaningful experiential examples through qualitative interviews, similar to those used in this study.

Finally, there is an opportunity to benchmark this against similar processes undertaken in other professions to inform the development of best practice in this area, building on the established work of PARN. To do this other professions would need to be encouraged to document and publish any project undertaken to review and develop new codes of conduct to enable the development of any best practice in the future.

9.4 Recommendations

In concluding, there remain some further recommendations emerging from the project:

1. Further development of the dissemination strategy is required. This could include suggestions already made on branch meeting presentations, Code

principle headings on membership cards and enhanced web coverage and media campaign.

2. The development of further case study examples to complement the ones already used, of not only misconduct but also grey areas of ethical practice.
3. The development of CPD to compliment the educational syllabus on professional ethics taking into account the models proposed. This will also resolve the gap that will ultimately exist for those who are qualified already but with no ethical education relating to practice.
4. Further qualitative research into ethical issues and dilemmas in health and safety practice.

Some of the recommendations that have been made here are now being put into practice by IOSH. For example, the inclusion of principle headings on membership cards is planned along with a media campaign to launch the new Code. CPD and ethical case study examples have been discussed but have not been planned yet. In reality the practice based examples needed to underpin any future CPD and case studies are likely to emerge as the new Code becomes more embedded. Several academic institutions will be re-validating their programmes in the near future, taking into account the recently revised syllabus that includes ethics as a component, not previously included. As such there will be an emerging need for educational material relevant to practice in the form of ethical case studies. These ideally, should be derived from qualitative research into ethical practice and dilemmas thus providing a further research opportunity.

The project has made a valuable contribution to health and safety practice. Not only has the PEC developed a new Code for IOSH it has also improved its understanding of ethical practice, education and regulation of the profession. The PEC has also ensured that IOSH continues to adapt to meet the needs of society, its members and employers. The project has, along with the DProf programme, been mapped against the programme descriptors, attached at appendix J.

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Appendices

Appendix A – Terms of Reference for the Professional Committee and its Successor the Professional Ethics Committee

THE INSTITUTION OF OCCUPATIONAL SAFETY AND HEALTH

REGULATIONS: 11C

REQUIRED BY BYELAW 13(4)

PROFESSIONAL COMMITTEE: TERMS OF REFERENCE

1. **Overall purpose**
 - 1.1 The guardian of IOSH professional standards, including all matters that influence the development and regulation of good OSH practice amongst members.
2. **Charter & Byelaws and Operational Guidance**
 - 2.1 Byelaw 13(4) provides for the Board of Trustees to appoint such Standing Committees as it thinks fit. These Regulations set out the terms of reference and composition of the Professional Committee.
 - 2.2 Unless the context otherwise requires, words and expressions used in these Regulations have the meanings given to them in the Charter and Byelaws of the Institution.
 - 2.3 These Regulations should also be read in conjunction with IOSH's Operational Guidance (OG). Any departure from the OG is clearly stated in these Regulations.
3. **Reporting**
 - 3.1 To Board of Trustees.
4. **Key responsibilities**
 - 4.1 Produce annual Professional Committee Report to Council, and seek Council opinions about strategic issues and policy developments.
 - 4.2 Occupational Safety & Health (OSH) practice standards:
 - 4.2.1 Apply agreed criteria for the regulation of those in professional occupational health and safety practice and others with a role in health and safety.
 - 4.2.2 Ensure results of evidence-based research into effective and ineffective OSH practices are incorporated into practice standards and qualification accreditation requirements; IPD requirements and CPD in a timely manner.
 - 4.2.3 Take appropriate internal and external initiatives to improve the regulation of OSH practice, and thereby the reputation of IOSH.
 - 4.2.4 Monitor and partner in, as appropriate, national and international health and safety initiatives by others to improve OSH practice standards.
 - 4.2.5 Admit persons to appropriate categories of membership of IOSH
 - 4.3 OSH professional training syllabuses and development:
 - 4.3.1 Maintain, and update as appropriate, accreditation requirements for academic/vocational qualifications accepted for categories of IOSH professional membership.
 - 4.3.2 Accredite and review OSH qualifications that meet the academic requirements for categories of IOSH membership.

THE INSTITUTION OF OCCUPATIONAL SAFETY AND HEALTH

REGULATIONS: 11C

REQUIRED BY BYELAW 13(4)

- 4.3.3 Liaise with organisations in the UK and Overseas offering recognised awards in OSH to maximise transferability.
 - 4.3.4 Maintain and update as appropriate, the IOSH Initial Professional Development (IPD) programme.
 - 4.3.5 Maintain, and update as appropriate, the IOSH Continuing Professional Development (CPD) scheme.
 - 4.3.6 Monitor and assist in the development and review of IOSH products for the professional development of IOSH members.
 - 4.4 Professional awards:
 - 4.4.1 Adjudicate and oversee the administration of IOSH professional awards.
 - 4.4.2 Award Honorary Fellowships.
 - 4.5 IOSH Code of Conduct and disciplinary procedure:
 - 4.5.1 Review and maintain the Code ensuring it reflects high standards and is comparable with best practice in other professional bodies. Recommend any necessary changes for approval by BoT, after appropriate consultation with Council.
 - 4.5.2 Consider all allegations of misconduct referred to it by the Chief Executive under the disciplinary procedure, and refer allegations to a Disciplinary Committee when appropriate.
- 5. **Membership**
 - 5.1 Chair, appointed by the Council, on the recommendation of the Board of Trustees as advised by the Nominations Committee.
 - 5.2 Up to 8 Chartered members, appointed by BoT, advised by Nominations Committee and the appointed Chair.

Note: Three of these members should have the necessary competence to be appointed Chairs of Sub-Committees.
 - 5.3 Quorum: 50% of members, not including chair.
 - 5.4 Voting: unless a specified majority is required, resolutions shall be passed by a simple majority of the votes of the Committee members present. In the event of an equality of votes, the Chair shall have a second or casting vote.
 - 5.5 Co-opted members may be appointed for specified periods to carry out specific tasks
- 6. **Meeting administration**
 - 6.1 Frequency: Typically 4/year.
 - 6.2 Secretary: Director of Professional Affairs.
 - 6.3 Agendas: At least 10 working days in advance.
 - 6.4 Budget source: Professional Affairs.
- 7. **Delegated Authorities**
 - 7.1 From Board of Trustees, to oversee membership applications and the IPD/CPD process.
 - 7.2 To:

THE INSTITUTION OF OCCUPATIONAL SAFETY AND HEALTH

REGULATIONS: 11C

REQUIRED BY BYELAW 13(4)

- 7.2.1** Fellowship and Review Sub-committee, to consider and recommend admittance to Fellowship and to review routine decisions made by permanent staff about membership applications.
- 7.2.2** CPD Sub-committee, to monitor and review CPD audit process and CPD scheme data.
- 7.2.3** IPD Sub-committee, to monitor overall standards and consistency.

THE INSTITUTION OF OCCUPATIONAL SAFETY AND HEALTH

REGULATIONS: 11B

REQUIRED BY BYELAW 13(4)

PROFESSIONAL ETHICS COMMITTEE: TERMS OF REFERENCE

1. **Overall purpose**
 - 1.1 To uphold the IOSH Code of Conduct and to develop and recommend changes to the Code as and when required.
2. **Charter & Byelaws and Operational Guidance**

Byelaw 13(4) provides for the Board of Trustees to appoint such Standing Committees as it thinks fit. These Regulations set out the terms of reference and composition of the Professional Ethics Committee.

Unless the context otherwise requires, words and expressions used in these Regulations have the meanings given to them in the Charter and Byelaws of the Institution.

These Regulations should also be read in conjunction with IOSH's Operational Guidance (OG). Any departure from the OG is clearly stated in these Regulations.
3. **Reporting**
 - 3.1 To Board of Trustees.
4. **Key responsibilities**
 - 4.1 Produce an annual Professional Ethics Committee Report to Council, and seek Council opinions about issues relating to ethical considerations in practice.
 - 4.2 IOSH Code of Conduct and disciplinary procedure:
 - 4.2.1 Review and maintain the Code ensuring it reflects high standards and is comparable with best practice in other professional bodies. Recommend any necessary changes for approval by BoT, after appropriate consultation with Council.
 - 4.2.2 Consider all allegations of misconduct referred to it by the Chief Executive under the disciplinary procedure, and refer allegations to a Disciplinary Committee when appropriate.
 - 4.2.3 To develop guidance relating to ethical considerations and dilemmas that may be faced by OSH practitioners in the course of their practice.
 - 4.3 To act as the Appeals Panel for Membership Application and Professional Development processes

THE INSTITUTION OF OCCUPATIONAL SAFETY AND HEALTH

REGULATIONS: 11B

REQUIRED BY BYELAW 13(4)

5. Membership

- 5.1** Chair, appointed by the Council, on the recommendation of the Board of Trustees as advised by the Nominations Committee.
- 5.2** Up to 8 Chartered members, appointed by BoT, advised by Nominations Committee and the appointed Chair.
Note: Three of these members should have the necessary competence to be appointed Chairs of Sub-Committees.
- 5.3** Quorum: 4 including Chair /nominated Chair
- 5.4** Voting: unless a specified majority is required, resolutions shall be passed by a simple majority of the votes of the Committee members present. In the event of an equality of votes, the Chair shall have a second or casting vote.
- 5.5** Co-opted members may be appointed for specified periods to carry out specific tasks

6. Meeting administration

- 6.1** Frequency: Once a year and on required dates as needed to discuss disciplinary complaints
- 6.2** Secretary: Professional Affairs Director/Ethical Practice Manager.
- 6.3** Agendas: At least 10 working days in advance.
- 6.4** Budget source: Professional Affairs.

Appendix B – Ethical Approval Letters Nov 2007



**Middlesex
University**

School of Health and
Social Sciences
The Archway Campus
Furnival Building
10 Highgate Hill
London N19 5LW

To: Shaun Lundy
Doctorate in Professional Studies in Health

Date: 1 November 2007

Dear Shaun

Re: Shaun Lundy (480) *'Professional Ethics: Occupational Safety & Health Practitioners Continuing Professional Development Needs'* Category A2 – Supervisor, Hemda Garelick

Thank you for the response which adequately answers the ethics committee's queries. On behalf of the committee, I am pleased to give your project its final approval. Please note that the committee must be informed if any changes in the protocol need to be made at any stage.

I wish you all the very best with your project. The committee will be delighted to receive a copy of the final report.

Yours sincerely

Dr John M Foster
Chair of Ethics Sub-committee (Health Studies)



Professor Hemda Garelick
Department of Natural Sciences
Middlesex University
The Burroughs
London
NW4 4BT

IOSH
The Grange
Highfield Drive
Wigston
Leicestershire
LE18 1NN
UK

t +44 (0)16 257 3100
f +44 (0)16 257 3101
www.iosh.co.uk

Our reference: SAB/Enquiries/2013/Lundy

22 March 2013

Dear Professor Garelick

RE: Shaun Lundy CMIOSH - Professional Doctorate Studies

I write to confirm that the IOSH Professional Committee gave approval for Shaun to conduct a review of the existing IOSH Code of Conduct and lead the development of a new Code, underpinned by research, consultation and benchmarking. The minutes for meetings held on the 12th May 2008 and 31st July 2008 noted the approval.

IOSH requests please that any participation relating to IOSH members (other than Shaun) is anonymised and that confidential proceedings are not included in any written material.

If you have any queries then please get in touch.

Yours sincerely

Simon Buckler
Ethical Practice Manager

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f +44 (0)16 257 3101
www.iosh.co.uk



Institution of Occupational
Safety and Health
Founded 1948
Incorporated by Royal Charter 2003
Registered charity 1096790
Recognised by the L.O. as an
international NSO

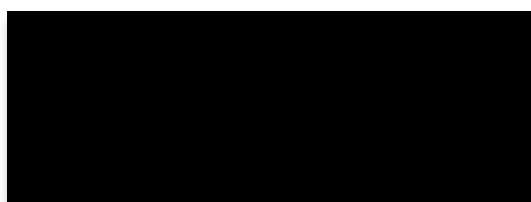
Appendix C – Minutes from the IOSH Professional Committees in 2008 on the Proposal for a review of the IOSH Code of Conduct

Confidential material has been blocked out and irrelevant pages left out.

<i>APPROVED BY COMMITTEE</i>	<i>CONFIRMED BY BoT</i>
<i>Chairman: A Asbury</i>	<i>Date:</i>

MINUTES OF A MEETING OF THE PROFESSIONAL COMMITTEE HELD AT THE GRANGE ON 12th MAY 2008

Present:



32,739
Current Members

Committee Administrator

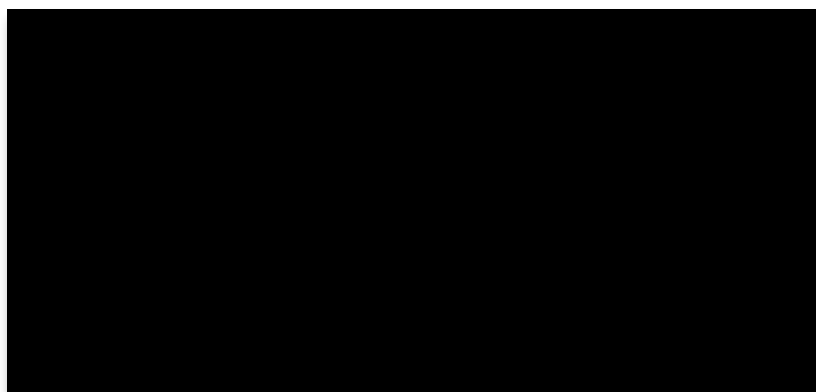
Apologies:

Not present:

18/08



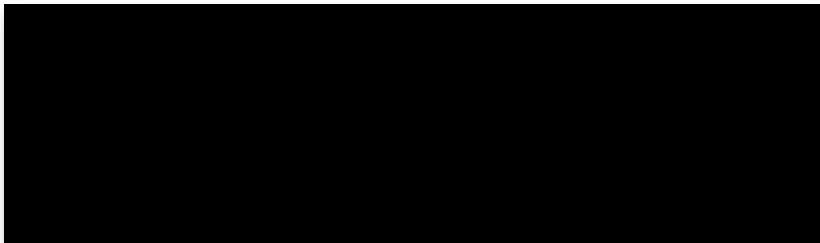
19/08 Introduction of New Members



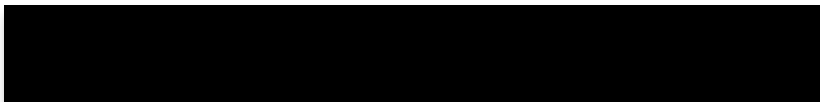
He is currently on the UK Advisory group on toxic substances.

20/08 Minutes of the Meeting held on 21st February 2008

The minutes of this meeting were taken as a true and correct record of this meeting.

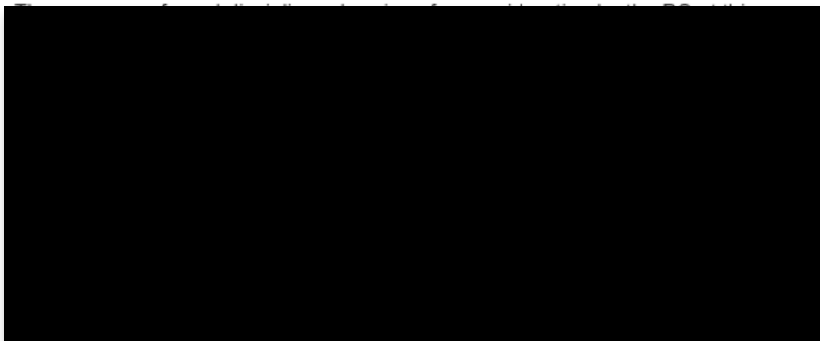


25/08 Regulated Profession



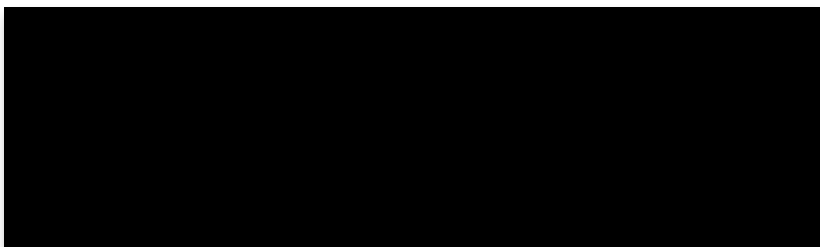
meetings.

26/08 Disciplinary Hearings and Code of Conduct



It was now several years since the Code of Conduct had been reviewed and revised and it was necessary for the PC to look at this issue. Shaun Lundy volunteered to lead this review. The Chairman asked the PC members to look at the Code of Conduct and to feedback to Shaun any comments they may have relating to this. The PC sub-committees were also asked to feedback in this process either as groups or as individuals. This would be included into the developing PC Workplan which would be discussed at the next PC meeting.
Action HH To draft.

27/08 Qualification Accreditation



APPROVED BY COMMITTEE		CONFIRMED BY BoT
Chairman: R Wood	Date: 04.08.08	Date:

THE MINUTES OF THE PROFESSIONAL COMMITTEE HELD ON 31ST JULY 2008 AT THE GRANGE

Present:

In attendance:

Apologies:

32/08

33/08 Minutes of the meeting held on 12th May 2008

These minutes were taken as a true and correct record of this meeting.

34/08 Matters arising not covered by the agenda.

28/08 Code of Conduct

Shaun Lundy had volunteered to lead this review of the IOSH Code of Conduct. He had conducted a small benchmarking exercise against other professional bodies and had concluded that the PC could take two courses of action:

- 1) A straightforward review of the current code could be conducted to bring the existing version up to date. However, Shaun did not feel that this would be that helpful in modernising the approach of the code.
- 2) A review which went into more depth on the ethical issues facing the profession, which would undoubtedly come to the fore in the future.

The committee members agreed that the second course of action would be the most beneficial. Shaun therefore proposed that he would place a proposal for a programme of development before the next meeting of the PC in November which would include:

- 1) A benchmarking survey against other professional bodies codes;
- 2) A series of interviews with existing OSH Practitioners;
- 3) Developing an ethical framework for IOSH
- 4) Re-writing the current Code

- 5) Provision of CPD training to understand the ethical considerations of practice for those members who did not have this included in their educational programmes
- 6) Guidance to the PC or ethical committee about how to identify breaches of the Code.

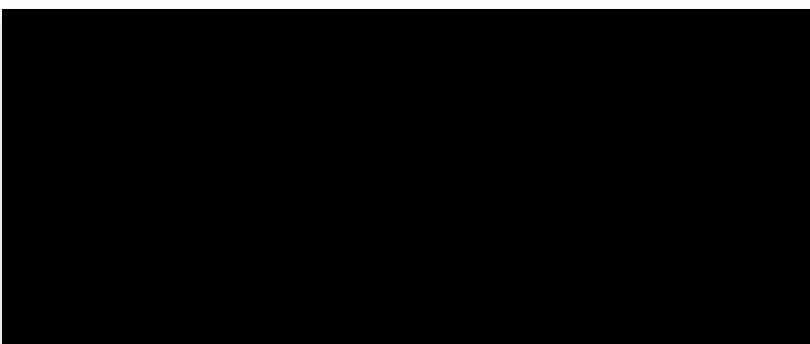
Shaun would also submit a paper to the IOSH09 committee on this theme. He was delivering a similar paper at the Society of Risk Analysis in Boston based on the work he was undertaking at Middlesex University.

It was agreed that this work should be submitted to the IOSH Development Fund on behalf of the PC so that Shaun's work on this could be funded and then undertaken within the university.

This was an exciting piece of work and the Chairman thanked Shaun for the work that he had already done. As IOSH intended to appoint an Ethical Practice Manager later in the year, this role would dovetail nicely into Shaun's proposals. In the interim period before this appointment was made Hazel Harvey would assist where possible.

Action: SL to produce the proposal for the next PC meeting.

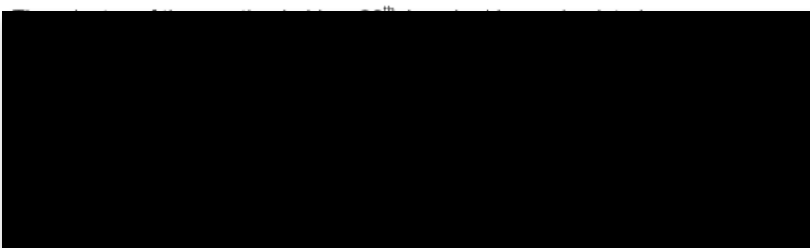
29/08 CSCS Cards



agreed that they should stand as currently.

35/08 Sub-Committee Minutes.

35/08.1 Fellowship and Membership Sub-Committee 26th June 08



Appendix D – Code Points from the Existing IOSH Code of Conduct

1. Members of the Institution, wherever employed, owe a primary loyalty to the workforce, the community they serve and the environment they affect. Their practice should be performed according to the highest standards and ethical principles, maintaining respect for human dignity. Members shall seek to ensure professional independence in the execution of their functions.
2. Members must abide by the legal requirements relating to their practice or operation.
3. Members called on to give an opinion in their professional capacity shall be honest and, to the best of their ability, objective and reliable.
4. Members shall take all reasonable steps to obtain, maintain and develop their professional competence by attention to new developments in occupational safety and health and shall encourage others working under their supervision to do so. They must comply with the Institution's Continuing Professional Development (CPD) scheme, if required to do so.
5. Members shall not undertake responsibilities in relation to health and safety which they do not believe themselves competent to discharge. Members shall acknowledge any limitations in their own competence, and shall not undertake any activities for which they are not appropriately prepared or, where applicable, qualified.
6. Members shall accept professional responsibility for all their work and shall take all reasonable steps to ensure that persons working under their authority or supervision are competent to carry out the tasks assigned to them; are treated with fairness and equal opportunity; and accept responsibility for work done under the authority delegated by them.
7. Members having good reason to believe that their professional advice is not followed shall take reasonable steps to ensure that persons overruling or neglecting their advice are formally made aware of potential adverse consequences which may result.
8. Members shall have regard to the reputation and good standing of the Institution, other members, and professional practice and standards, and shall not either directly or indirectly bring them into disrepute. A member may be required to provide the Institution with such information as is reasonably required by it in order to regulate the professional conduct and discipline of its members.
9. Members shall not recklessly or maliciously injure, or attempt to injure, whether directly or indirectly, the professional reputation, prospects or business of another.
10. Members shall not behave in a way which may be considered inappropriate to other members or staff of the Institution.
11. Members shall not improperly use their membership or position within the organisation of the Institution for commercial or personal gain or use or attempt to use qualifications, titles and/or designations to which they are not entitled.
12. Members shall seek to avoid their professional judgment being influenced by any conflict of interest and shall inform their employer, client, or the Institution of any conflict between the member's personal interest and service to the relevant party.

13. Members shall not improperly disclose any information which may reasonably be considered to be prejudicial to the business of any present or past employer, client or the Institution.
14. Members shall ensure that information they hold necessary to safeguard the health and safety of those persons for whom they have a legal and moral responsibility is made available as required.
15. Members shall ensure, in holding or handling any information relating to living individuals, that they comply with the data protection principles and notification requirements set out in the Data Protection Act 1998 or equivalent legislation for the country or jurisdiction in which they undertake their duties.
16. Members shall maintain financial propriety in all their professional dealings with employers and clients and shall ensure that they are covered by professional indemnity insurance where appropriate.
17. Members shall not unfairly discriminate in the course of their professional business on the grounds of race, colour, religion or belief, disability, sex, marital status, age, sexual orientation, nationality and ethnic or national origins.
18. Members must act within the law and are required to notify the Institution if they are convicted of any criminal offence. A relevant conviction may lead to disciplinary proceedings against that member.
19. Members must comply with the Institution's Charter, Byelaws and Regulations and must notify the Institution if they come within the provisions of Byelaw 7 (c).

Appendix E – Overlap Analysis Matrix for the Existing IOSH Code

Overlap Analysis Matrix for the Existing IOSH Code

Code Point	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	Total
1			1	1												1	1	1		5
2															1		1	1		3
3	1											1				1				3
4	1				1														1	3
5				1															1	2
6																	1	1		2
7																				0
8									1	1	1									3
9								1		1										2
10								1	1											2
11								1											1	2
12			1													1				2
13														1	1					2
14													1		1					2
15		1											1	1			1			4
16	1		1									1								3
17	1	1				1									1			1		5
18	1	1				1											1			4
19				1	1						1									3
Total	5	3	3	3	2	2	0	3	2	2	2	2	2	2	4	3	5	4	3	52

Appendix F – New Code of Conduct, Guidance and Disciplinary Procedure

Code of Conduct, Guidance and Disciplinary Procedure

Foreword

This publication is divided into three parts:

Part 1
Code of Conduct
Part 2
Code of Conduct – Guidance
Part 3
IOSH Disciplinary Procedure

IOSH has been granted a Royal Charter to act in the interests of the general public benefit.

IOSH's Code of Conduct ("the Code") is a public document. It has at its heart the IOSH vision of "a world of work which is safe, healthy and sustainable". It provides a strong ethical foundation for all our members working towards this vision.

The purpose of the Code is to help members demonstrate their value and reliability through adhering to high standards. The aim of the Guidance is to support members in their efforts to reach and maintain the standards, which are expressed as integrity, competence, respect and service. The standards are based on public expectations of professionalism. The meaning of each standard is presented as a set of obligations expressed as individual Code Points.

In scope, the Code applies principally to the activities of members as health and safety professionals. Members owe a primary loyalty to those at risk and should seek to ensure professional independence in the execution of their duties. In a profession, it is essential that members demonstrate integrity by being honest and acting fairly. Members must also avoid departing from the standards of integrity, competence and respect in their private lives in any way that could undermine public trust and confidence in the profession.

Wherever possible, IOSH has provided practice-based examples in the Guidance to help interpret the Code. Members may also contact IOSH staff with queries about the Code and how it relates to particular situations. IOSH will supplement the Guidance to address frequently-asked questions.

IOSH may investigate apparent or alleged non-compliance with the Code. Under Byelaw 8(1), all members have a duty to comply with the Code, which is effective from 01 March 2013. [Prior to that date the Code of Conduct approved by Council in September 2004 will apply.] Primarily the Code and Guidance are to assist members to do the right thing. When IOSH makes enquiries about members' compliance with the Code, it will give them the opportunity to explain the reasonableness of their actions or omissions.

Part 1

Code of Conduct

1 Integrity

Members are required to:

- 1.1 Be honest;
- 1.2 Abide by the law;
- 1.3 Notify the Institution in writing promptly if they have been
 - (a) convicted of a criminal offence by a Court or
 - (b) charged with a criminal offence contrary to health and safety legislation or
 - (c) adjudged bankrupt or have entered into a formal arrangement with their creditors; and
- 1.4 Avoid conflicts of interest wherever possible and if one arises promptly take appropriate steps to manage it.

2 Competence

Members are required to:

- 2.1 Ensure they are competent to undertake proposed work;
- 2.2 Ensure persons working under their authority or supervision are competent to carry out the tasks assigned to them;
- 2.3 Undertake appropriate continuing professional development and record it in the manner prescribed by the Institution; and
- 2.4 Ensure that they make clients, employers and others who may be affected by their activities aware of their levels of competence.

3 Respect

Members are required to:

- 3.1 Cooperate fully with IOSH and abide by its Charter, Byelaws and Regulations;
- 3.2 Respect the rights and privacy of other people and organisations;
- 3.3 Cooperate with employers or clients in fulfilling their legal duties under the terms of their employment or consultancy contracts;
- 3.4 Have due regard for the effect their professional activities may have on others;
- 3.5 Ensure that their professional and business activities are reasonable; and
- 3.6 Respond promptly and appropriately to disputes and complaints.

4 Service

Members are required to:

- 4.1 Ensure that the terms of appointment and scope of work are clearly recorded in writing;
- 4.2 Ensure that, where necessary, they have adequate professional indemnity insurance when providing consultancy services;
- 4.3 Carry out their professional work in a timely manner;
- 4.4 Ensure that professional advice is accurate, proportionate and communicated in an appropriate format;
- 4.5 Have due regard for levels of service and customer care reasonably expected of them; and
- 4.6 Inform any person overruling or neglecting their professional advice of the potential adverse consequences and keep a written record of the date, time and nature of this action.

Part 2

Code of Conduct – Guidance

Introduction

While this Guidance on the Code of Conduct is primarily addressed to IOSH's members, it is also a public document. It provides explanation on how to apply the Code in practice. It will be updated as and when necessary; you should check the IOSH website for the latest version. In particular, investigation of future complaints will serve to clarify the interpretation of particular Code Points.

1 Integrity

Members are required to:

1.1 Be honest

You must be honest in discharging your duties as a health and safety professional. In litigation concerning other professionals, courts have decided that defendants have been dishonest if they knew that what they were doing would be regarded as dishonest by honest people.

Knowingly misleading anybody for financial or other gain that could not have been made honestly is most likely to be unacceptable. Examples include giving misleading information about qualifications and/or memberships, either to a prospective or current client, in order to gain or retain instructions, or to a prospective or current employer, in order to obtain employment or to attain a promotion or enhanced benefits. Assisting others to gain from the provision of false information is also unlikely to be acceptable. Examples include entering misleading details on policies, procedures, risk assessments or similar documentation or records.

You must be honest when you are 'off duty' too. However, IOSH will be reluctant to investigate if what is alleged, even if true, would not materially affect either your reputation as a health and safety professional, other members' professional reputation or the reputation of IOSH itself.

1.2 Abide by the law

To gain public trust and confidence, you must obey the law in all aspects of your life. Convictions for some criminal offences may lead to disciplinary proceedings being taken against the convicted members by IOSH.

Historically IOSH has not given an exhaustive list of these criminal offences and we consider that doing so would be unwise. Generally, offences under health and safety legislation, and any involving dishonesty (see guidance to Code Point 1.1), are likely to lead to disciplinary proceedings. Sexual offences and offences involving violence are also likely to lead to disciplinary proceedings. Factors affecting IOSH's decision whether to bring disciplinary proceedings will include the maximum sentence available on a first conviction for the offence, the extent to which you did or stood to profit from the offence and the extent of the actual or possible loss or harm to any victim.

- 1.3 *Notify the Institution in writing promptly if they are*
- (a) *convicted of a criminal offence by a Court or*
 - (b) *charged with a criminal offence contrary to health and safety legislation or*
 - (c) *adjudged bankrupt or enter into a formal arrangement with their creditors.*

Transparency in all the matters covered by this Code Point underpins the integrity standard.

- (a) You must be proactive and give IOSH details of the offence(s) and the Court as a bare minimum, whether or not you are awaiting sentence and/or intend to appeal.

If you accept an offer of a fixed penalty for an illegal act, without reference to a court, then IOSH does not anticipate taking disciplinary proceedings. For instance, in England fines and driving licence endorsements for speeding may be concluded without court involvement. These matters fall outside the scope of Code Point 1.3(a). You should, however, reflect on the particular threat to your own professional reputation, the reputation of other members and the reputation of IOSH presented by such illegal acts.

- (b) Being charged with an offence under health and safety legislation potentially could also affect the reputation of other members and/or IOSH itself, so self-reporting is imperative.
- (c) You should give full details of all the circumstances: the reasons why you were unable to pay your debts in full as and when they fell due; the steps you took to minimise losses to your creditors; and any reports prepared on your financial position, breaking down your assets and liabilities, including the nature of those liabilities. IOSH is likely to look more favourably on situations where your culpability for your predicament is low.

1.4 *Avoid conflicts of interest wherever possible and if one arises promptly take appropriate steps to manage it.*

Conflicts of interest occur where your judgment may be affected by more than one interest, meaning an interest in the outcome: what may happen as a result of your involvement. Something that could benefit one interest may be detrimental to the other interest. An interest may be personal or professional. You usually have a personal interest in being able to provide for yourself and any dependants. This should not be allowed to interfere with the professional interest of giving appropriate health and safety advice.

If you recognise a dangerous procedure but do not recommend a shutdown in case it ultimately leads to the closure of the company and your redundancy, then that could point to a lack of integrity. Similarly, as a consultant, if you are aware that your recommendations are not being implemented, but you continue to advise the organisation for the fee income you derive, then that may be similarly questionable.

You are unlikely to be able to avoid having a personal interest in earning a living but should be able to put the welfare of the workforce or others affected by your activities first. Where you are acting as an expert witness in judicial proceedings the overriding objective will be to assist the decision-maker to deal with the case justly. If you take on the role of giving expert witness evidence, you should disclose any previous or continuing relationship that you have with any of the parties in the case at the time you are instructed and in any report prepared for the case.

The conflicts that you are required to avoid include situations such as accepting responsibility for advising both parties to a contract. This is because the interests of the parties are competing interests that are in conflict, as each wants the best outcome for them. If you advise company A on selecting an external training provider and company B on tendering for providing training services to A, without disclosing to A or B that you act for the other, then that is likely to lead to a breakdown in trust and the possibility of complaint. A wants the best value it can get for its training budget and B wants to win custom at the highest rate possible. If the full extent of your involvement becomes known, A and B are likely to doubt that you could have at all times acted in their best interests and may resent you earning two fees. Indeed both may regard the second fee as an inappropriate secret profit made by exploitation.

Conflicts of interest may also arise through the offer or acceptance of inducements. Inducements can include gifts, hospitality, preferential treatment and inappropriate appeals to friendship or loyalty. An inducement could affect your professional independence. You should not encourage any inducements which a reasonable observer may perceive to be factors that could affect your or another member's objectivity, and thus the health and safety of others.

There will be occasions where people approach you for a professional opinion that implicitly agrees with their interest. For example, a relative or friend wants you to give expert evidence in judicial proceedings for which the friend or relative's interest is in an outcome favourable to them, which may not be a fair one. Even if you disclose your relationship and satisfy yourself that you are giving your genuine opinion that coincidentally favours your relative or friend, there is a real danger that the perception will be that you have allowed your objectivity to be clouded by family or friendship. If you fail to disclose this conflict of interest, it may look like you are concealing material information that undermines your credibility as an expert. Such concealment could point towards a lack of integrity. You need to consider whether, for professional reasons, you need to decline to take on certain work in the first place.

If a conflict of interest arises, you should take appropriate steps to manage it. This may involve informing parties of the conflict and seeking their approval for adjustments to the situation designed either to remove the conflict entirely or significantly reduce its actual impact. Best practice, before continuing to act, is to seek written confirmation from each affected party that they have considered your disclosure and whether to take advice from an alternative source. In some circumstances the conflict may be of such a nature as to prevent a reasonable observer from concluding the situation can be managed satisfactorily. If so, you may need to consider ceasing to act for a party and possibly withdraw completely. When in doubt you should contact IOSH to discuss the matter.

2 Competence

Members are required to:

2.1 *Ensure they are competent to undertake proposed work.*

Competence is a combination of knowledge, skills, experience and recognition of the limits of your capabilities. Knowledge can be gained or developed by studying for qualifications, but a qualification, by itself, is not evidence of competence. It must be enhanced by skills and knowledge that you develop through experience.

For example, as a health and safety practitioner you will have studied the harmful effects of noise along with prevention and control strategies for noise. You may not, however, have been taught the skills or have had the experience to be competent to undertake a detailed noise survey. In this case you would seek the services of a competent person in noise assessment or attend the appropriate course and gain experience to raise your competence to an appropriate level to undertake the survey.

If you provide expert witness services, you must take particular care to meet the requirements of the legal jurisdiction where you are providing them. Court rules may specify a number of mandatory statements and declarations for inclusion in reports. Members are strongly encouraged to undertake preparation for and familiarisation with the role of expert witness. Your overriding duty will be to the Court rather than to any person instructing you or with an interest in the outcome of the proceedings. Where a party to a case regards your evidence as unfavourable to their desired outcome then that party may seek to discredit you. If you do not demonstrate a grasp of both the duties of an expert witness and the Court rules that apply to your evidence, then this is one possible line of attack on your competence.

2.2 *Ensure persons working under their authority or supervision are competent to carry out the tasks assigned to them.*

Where you are responsible for managing or supervising individuals, you are required to ensure that they are competent to carry out the tasks assigned to them. This may include: determining whether an individual is competent when recruited to a role; engaging the services of a consultant; or managing a team of advisors who provide a range of functions for an employer. It may also include making arrangements for

persons under your authority to undertake appropriate Continuing Professional Development to maintain their level of competence.

It is advisable, as a supervisor or manager, to have a clear idea of the range of competences present in your team to avoid placing individuals in a situation where they may feel obliged to undertake a task, even when they are not competent to do so.

2.3 *Undertake appropriate continuing professional development and record it in the manner prescribed by the Institution.*

Competence is not attained through qualification alone. You should maintain and improve your competence by participating in Continuing Professional Development (CPD) activities throughout your professional career.

The CPD regulations require chartered fellows, chartered members and technician members to undertake a programme of CPD. You should document your CPD through the IOSH system. CPD is not limited to attending training events and conferences. You are encouraged to reflect on all aspects of your professional activities, to identify positive areas of practice that have led to new insights, and to identify gaps in knowledge. Further advice on how to maintain your CPD is available from IOSH. You should expect IOSH to take a look at your compliance with the CPD regulations if it has cause to make any enquiries about your compliance with other parts of the Code.

2.4 *Ensure that they make clients, employers and others who may be affected by their activities aware of their levels of competence.*

There may be occasions when you are asked to carry out a specific task that requires specialist skills or knowledge that are beyond the limits of your competence. In these circumstances you should inform the client or employer of the limitations of your competence and consider the following options.

- (a) Decline the work, indicating where specific competences are required. It is recommended that you identify a suitable person or organisation with such competences to complete the work.
- (b) Agree to carry out the work, provided it is supervised and/or peer-reviewed by another suitably competent person. This may be the best way to extend your current competences, if you desire that.
- (c) Agree to carry out the work, but with your initial advice subject to review in the light of wider

experience. This option may be appropriate for novel situations for both you and your client or employer, and where the risks to all involved are assessed and acceptable. You should make efforts to avoid such situations and learn how to minimise them, but they may be the only realistic option in certain circumstances.

Remember that stopping or delaying work to consult others with appropriate competences is also a safe option in most cases. Working outside your competence area may have legal implications to you and the employer, and also to your continued membership of IOSH.

3 Respect

Members are required to:

3.1 *Cooperate fully with IOSH and abide by its Charter, Byelaws and Regulations.*

Cooperation with IOSH includes providing information as requested. For example, you may be asked to provide copies of letters, emails, advertising material, business cards, policy and procedures documents, risk assessments or reports. You could be asked to clarify CPD details by providing copies of attendance certificates to conferences or courses following an audit of your CPD. If any doubt about your financial propriety is raised, you may be asked for financial records. Code Point 1.3 already requires that you notify IOSH of specified criminal actions or allegations, and IOSH may request further details concerning these.

You must have regard to the reputation and good standing of IOSH and other members. You should avoid conduct that brings you and/or other members and / or IOSH into disrepute; and/or is prejudicial to the interests of IOSH. Such conduct may include injuring the reputation of a member and inappropriate behaviour, such as using foul language, when representing IOSH at an event. Conduct that is prejudicial to the interests of IOSH may include using the IOSH logo or name without permission for financial gain.

3.2 *Respect the rights and privacy of other people and organisations.*

As an occupational safety and health professional, disagreements will happen from time to time. To avoid making disagreements personal, it is important to remember that it is often acceptable to criticise ideas but often unacceptable to criticise individuals, particularly in an offensive manner. Respecting other people includes behaving in an appropriate manner. Inappropriate behaviour includes the use of foul language or acting in an intimidating or threatening way.

Respecting an individual's rights will include ensuring that you do not discriminate on the grounds of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation. Race includes colour, nationality and ethnic or national origin. You should not discriminate on the grounds of socio-economic status either.

You must specifically respect the privacy of the individual. Information technology may have an adverse effect on an individual's privacy, and advice should be sought on data protection legislation when storing personal information.

3.3 *Cooperate with employers or clients in fulfilling their legal duties under the terms of their employment or consultancy contracts.*

As a competent person, you have an obligation to provide appropriate advice concerning the health, safety and welfare of employees and others in assisting employers and clients in fulfilling their legal duties. Employers may from time to time request further information to clarify advice given and, where this is clearly within the terms of your contract, you have an obligation to provide it.

3.4 *Have due regard for the effect their professional activities may have on others.*

You should take all reasonable care to maintain the confidentiality of personal, managerial, technical, commercial and/or security information obtained as a result of your professional activity.

Where information obtained as a result of the professional activity relates directly to the health and safety of individuals, you should endeavour to ensure that such information is communicated to the individuals concerned by working through the information owners.

3.5 *Ensure that their professional and business activities are reasonable.*

The following are examples of unreasonable behaviour, lack of transparency and impartiality that are likely to be considered to be a breach of 3.5:

- Providing inappropriately bundled services to clients, causing them to pay for things they do not need;
- Failing to respond to a client who had repeatedly requested a response relating to work undertaken;
- Recommending suppliers of, say, personal protective equipment, or the services of any third party, without mentioning any benefit, such as commission for the introduction, that could accrue to you (this may fall under Code Point 1.4); and
- Making claims of success rates (either in assisting with contractor accreditation scheme applications or for examination candidates tutored or trained by you or by your organisation) that cannot be substantiated and/or are not adjusted from time to time in order to reflect the latest outcomes.

3.6 *Respond promptly and appropriately to disputes and complaints.*

A dispute can include a disagreement or a difference of opinion between two or more parties. A complaint is an expression of dissatisfaction requiring a response.

Completely ignoring a complaint or failure to manage a dispute, whether you feel it is justified or not, is generally not acceptable. As a professional you are expected to take steps to resolve disputes and respond to complaints whenever possible. Consideration should also be given to the guidance under Code Point 3.2.

4 Service

Members are required to:

4.1 *Ensure that the terms of appointment and scope of work are clearly recorded in writing.*

It is possible to have a legally binding oral contract. The problem in the event of any dispute, however, is that it is one person's word against another's.

One of the most likely causes of a dispute is a lack of contractual clarity. Professional indemnity insurers will expect written agreements because defending claims for inadequate professional service based on oral contracts will be harder. Written agreements should aid debt recovery. If you are seeking to recover fees via a Court process and the client contests, why should your word automatically be preferred over the client's? If you

expect to be believed as a 'professional', you may find that a Judge cannot understand why you – the professional – have acted without a written agreement.

4.2 *Ensure that, where necessary, they have adequate professional indemnity insurance when providing consultancy services.*

Independent consultants will require professional indemnity insurance (PII) cover. Further advice on the recommended levels of cover can be obtained by contacting an insurance broker.

A member who is in full-time employment or working for a larger consultancy will probably be covered by the organisation's indemnity cover. Members, however, have an obligation to confirm this with their employer.

4.3 *Carry out their professional work in a timely manner.*

Delays in issuing reports, conducting inspections, producing policies and procedures may have implications on the health, safety and welfare of employees. Agreeing the terms and scope of the work in advance, in accordance with Code Point 4.1, will help clarify the time requirements. Delays in work can happen due to unforeseen circumstances. If so, members are advised to inform the employer or client at the earliest opportunity so that they can seek other sources of advice if they need an urgent response.

4.4 *Ensure that professional advice is accurate, proportionate and communicated in an appropriate format.*

Minor mistakes do not generally amount to a breach of the Code but may result in complaints or disputes, which fall under Code Point 3.6. Other matters may have more serious consequences. For example, citing legislation inaccurately in a report could have serious implications in the workplace and may be viewed differently. If a Court makes a finding that you have been negligent when providing professional advice, then that will not automatically lead IOSH to disciplinary proceedings against you. In deciding what action, if any, to take, IOSH will look at the wider circumstances. If you are practising as a consultant and pay damages awarded against you, then that would be a mitigating factor. Hence the need to have adequate PII cover as required at Code Point 4.2 above. Aggravating factors could include inability to pay damages awarded and any failure to comply with Code Points 2.1 and 2.3.

A proportionate approach to professional advice is required. For example, over-stating the risk may lead to excessive expenditure or further consultancy not necessarily needed. The format used when providing professional advice will vary. In most situations best practice will be to provide written advice, or written confirmation of advice provided orally, as soon as is reasonably practicable. You should bear in mind that, for PII purposes, it is highly desirable to have an audit trail of information received and advice given, in order to deal efficiently with any subsequent claims.

4.5 Have due regard for levels of service and customer care reasonably expected of them.

You should keep appropriate records. This includes contemporaneous attendance notes for detailed telephone conversations. In particular, any significant changes to the originally agreed service level and payment terms should be documented. Inertia when it comes to recording agreed variations could cause future disputes.

You should also have some type of records management system. If you use external storage facilities you need to know exactly what you have sent there and be able to retrieve records efficiently. You should have regard to other IOSH publications such as the Consultancy Good Practice Guide.

Where a client has contracted out a service to you, it would be inappropriate to then further sub-contract that service to another party without the client's express agreement. This would be less appropriate still if the sub-contractor's level of competence was lower than your own. (See also Code Points 2.2 and 3.5.)

You should consider giving advance notice to clients of periods where you will be unavailable in order to manage their expectations. Good communication can make complaints far less likely. If you expect to observe religious or cultural festivals that are not public holidays, then letting clients have early notification of dates you will be unavailable is likely to aid relations. If you practise on your own and know in advance that you will be unavailable for more than a few working days then think about making arrangements to prevent the impression forming that you do not answer letters, return calls, etc. It is also a good idea to have some contingency plans for unexpected absences. A common cause of complaints to professional bodies is failure to

respond to clients. A common cause of these complaints escalating to disciplinary proceedings is failure by members to respond to their professional bodies. If you are unable to work normally you need to be able to depend on somebody to relay that news on your behalf.

If you are moving you should ensure continuity of service is not broken. You need to consider postal re-direction for the maximum period if you have not informed all current and recent clients of your change of address in advance.

4.6 Inform any person overruling or neglecting their professional advice of the potential adverse consequences and keep a written record of the date, time and nature of this action.

As a health and safety professional, you may find employers or clients occasionally either ignore your advice or fail to act on all of it within your recommended timescales. There can be times when the employer or client is ignoring advice on something that presents an imminent danger to the workforce. Health and safety professionals are required to exercise professional independence and to remain as objective as they can. If you believe your advice is not being followed, you should take reasonable steps to make the person overruling your advice aware of the potential consequences. This would normally be in writing, and you should ask for a confirmation receipt. If this does not work, then you are expected to escalate the matter to the next tier of management in a further effort to see changes implemented. In a situation where you have a genuine concern that death or serious injury might result, then the right thing to do is contact an enforcement agency such as the Health and Safety Executive (HSE). You are expected to "do the right thing" regardless of the possible cost to you. In extreme cases, this might mean resigning or ending a relationship with a client.

HSE provides information on the Public Interest Disclosure Act 1998, which is designed to protect workers who 'blow the whistle' about a wrong-doing. A wrong-doing may include where you have a reasonable belief that your disclosure tends to show one or more of the following: a criminal offence; a breach of a legal obligation; a miscarriage of justice; a danger to the health and safety of any individual; damage to the environment; or the deliberate covering-up of information tending to show any of the above.

Part 3

Disciplinary Procedure

Foreword

The Board of Trustees has made these Regulations that are required under Byelaw 8 'Discipline'. Council has approved these Regulations. They come into force on [date].

Under its Royal Charter, IOSH acts in the interests of the general public benefit by doing what may be necessary to maintain and improve the professional status of its members. Accordingly members must follow the IOSH Code of Conduct, the purpose of which is to enable them to uphold standards of integrity, competence, respect and service so that there is public trust and confidence in them and IOSH itself.

IOSH will provide guidance explaining how complaints may be made against IOSH members. It is important that the facility to complain exists but complaints will only lead to disciplinary proceedings in serious cases.

1 Interpretation and definitions

- 1.1 In these Regulations, unless the context otherwise requires:
 - 1.1.1 Words importing the singular number only shall include the plural number and vice-versa;
 - 1.1.2 Words importing the masculine gender only shall include the feminine gender, and shall be taken to include reference to organisations;
 - 1.1.3 Words denoting persons shall include organisations.

- 1.2 Unless the context otherwise requires, words and expressions used in these Regulations shall have the meanings given to them in the Charter and Byelaws of IOSH, and the following words and expressions shall have the meanings set out below:

- 'the Complainant' means the person who made the allegation of misconduct and may be an employee or appointee of IOSH;
- 'the Director' means the Executive Director Membership or another Executive Director of IOSH who may delegate his role under these Regulations to an employee or appointee of IOSH, so references to the Director within these Regulations shall be read as references to the employee or appointee to whom the Director has delegated;
- 'Hearing' means a meeting of either the Disciplinary Committee or the Appeal Committee at which the Director and the Subject may be heard as prescribed by these Regulations;
- 'a Higher Penalty' means removal from the Board of Trustees and/or Council and/or any other IOSH committee or suspension of membership of IOSH or expulsion from membership of IOSH;
- 'Misconduct' means conduct that
 - (i) breaches the Code of Conduct and/or
 - (ii) amounts to unacceptable professional conduct within the standards expected in the health and safety profession and/or
 - (iii) may bring IOSH or the health and safety profession into disrepute and/or
 - (iv) is prejudicial to the interests of IOSH and/or
 - (v) is in breach of a decision made, or penalty imposed under these Regulations;
- 'the Professional Ethics Committee' means the Professional Ethics Committee or such other committee as the Board of Trustees may from time to time authorise;
- 'the Public Interest' means the interests of the general public benefit and 'what is in the Public Interest' means what is necessary in order to maintain public trust and confidence in IOSH members and IOSH;
- 'the Relevant Committee' means the Professional Ethics Committee, Disciplinary Committee or Appeal Committee all of which shall make decisions under these Regulations by simple majority; and
- 'the Subject': means a member of IOSH who is the subject of an allegation of misconduct.

2 Aim

These Regulations set out the procedure to be followed where an allegation of misconduct is made against a member of IOSH. The aim of these Regulations is fairness, so the fact that any allegation of misconduct is made will not automatically lead to the imposition of any penalty. A member will be given reasonable opportunity to put their case where the allegation is suitable for investigation. In performing their roles under these Regulations the Director and the Relevant Committee shall have regard to the Public Interest, proportionality and any current policy document concerning these Regulations published by IOSH.

3 General provisions

- 3.1 *Time limits*
The Director may, at his discretion, vary any time limit set out in these Regulations.
- 3.2 *Requirements for an allegation of misconduct*
 - 3.2.1 An allegation of misconduct must be made in writing, or a written summary of it agreed between the Director and the Complainant, and accompanied by copies of any documentation relevant to it.
 - 3.2.2 IOSH shall not be obliged to investigate an allegation of misconduct if
 - (i) the allegation is made anonymously; or
 - (ii) the alleged incident occurred more than one year prior to receipt of the allegation.
- 3.3 *Legal proceedings*
 - 3.3.1 The Director may at his discretion suspend investigation of an allegation of misconduct under these Regulations where the existence of any criminal investigation or other legal proceedings indicates that this is appropriate.
 - 3.3.2 In considering an allegation of misconduct, the Relevant Committee shall be entitled to rely on a certificate of criminal conviction and/or transcript of the criminal court's judgment as evidence of the offence committed, or the decision of a civil court or tribunal as evidence of the issues determined by that court or tribunal.
- 3.4 *Standard of proof*
Subject to the provisions of these Regulations the Relevant Committee may find an allegation of misconduct proven or confirm a finding that an allegation of misconduct is proven provided it is satisfied on the evidence available that it is more likely than not to be true.

3.5 Precautionary suspension

- 3.5.1 If the Subject is charged with or convicted of a criminal offence under health and safety legislation or any other serious criminal offence the Director may suspend him with immediate effect.
- 3.5.2 Unless determined otherwise by the Director, a member who is suspended shall not, throughout the period of suspension, be permitted to use any designation or initials appropriate to membership, and may not attend or vote at any general meetings of the members.
- 3.5.3 Unless determined otherwise by the Director, the period of suspension shall continue until the conclusion of any disciplinary proceedings.
- 3.5.4 A member who is suspended may make written representations to the Director within 10 working days of the suspension being imposed.
- 3.5.5 A member who is suspended may apply in writing to the Director for the suspension to be reviewed every four weeks.

4 Initial stages

- 4.1 *Decision by the Director whether to investigate or not*
 - 4.1.1 Within 15 working days of receiving an allegation of misconduct the Director shall:
 - (i) contact the Complainant to acknowledge receipt; and
 - (ii) assess whether it is necessary to seek any further information relating to the allegation of misconduct from the Complainant or elsewhere and if so request it.
 - 4.1.2 As soon as is reasonably practicable the Director shall decide whether to investigate the allegation of misconduct.
 - 4.1.3 If the Director decides not to investigate he shall send the Complainant reasons for his decision in writing.
 - 4.1.4 If the Director decides to investigate he shall send the Subject formal written notice of the allegation of misconduct, together with copies of any documentation submitted by the Complainant or obtained from any other source that affected his decision to investigate, and require a written response from the Subject.
 - 4.1.5 Within 20 working days of receiving a notice from the Director in accordance with paragraph 4.1.4, the Subject shall submit a written response stating whether he admits or denies the allegation of misconduct, and must provide copies of any documentation upon which he wishes to rely.

- 4.2 *Decision by the Director whether to refer to the Professional Ethics Committee or not*
- 4.2.1 After 22 working days have elapsed from the date of notice given in accordance with paragraph 4.1.4 the Director shall decide whether to refer the allegation of misconduct and any response from the Subject for consideration by the Professional Ethics Committee.
- 4.2.2 If the Director decides not to refer to the Professional Ethics Committee he shall send the Complainant and the Subject reasons for his decision in writing.
- 4.2.3 If the Director decides to refer the allegation of misconduct to the Professional Ethics Committee he shall provide the Professional Ethics Committee with copies of the documentation sent to the Subject in accordance with paragraph 4.1.4 together with copies of documentation received from the Subject (if received).

5 Professional Ethics Committee

- 5.1 *Jurisdiction*
The Professional Ethics Committee shall consider allegations of misconduct referred to it by the Director under paragraph 4.2.3.
- 5.2 *Composition*
The composition of the Professional Ethics Committee is prescribed in separate Regulations made pursuant to Byelaw 13.
- 5.3 *Procedure*
The Professional Ethics Committee shall make decisions based solely on documentation provided to it.
- 5.4 *Powers*
The Professional Ethics Committee may:
- (a) adjourn on such terms as it considers appropriate; or
 - (b) dismiss the allegation of misconduct on the grounds that there is no case to answer or that any further formal action under these Regulations is disproportionate; or
 - (c) if the Subject admits the allegation, either
 - (i) invite the Subject to make written representations by way of mitigation and, after considering any representations received, provide guidance on his conduct, or issue a reprimand; or
 - (ii) if the Professional Ethics Committee considers that a Higher Penalty ought to be imposed, refer the matter to the Disciplinary Committee under paragraph 5.4(d); or
 - (d) refer the matter to be considered by the Disciplinary Committee..

5.5 Notification of decisions

- 5.5.1 The Professional Ethics Committee shall notify the Director of its decision in writing within 10 working days of the decision being made. The notice must set out the reasons for the Professional Ethics Committee's decision.
- 5.5.2 Within 10 working days of receipt of the Professional Ethics Committee's decision, the Director must notify the Subject and the Complainant of the decision.
- 5.5.3 There is no right of appeal against the decision reached in paragraph 5.4 above.

6 Disciplinary Committee

- 6.1 *Jurisdiction*
The Disciplinary Committee shall consider matters referred to it by the Professional Ethics Committee in accordance with paragraph 5.4 (d) unless the Director elects to cancel the referral on any of the following grounds:
- (a) the Subject has died; or
 - (b) in light of new information since the referral there no longer appears to be a realistic prospect of a finding that the allegation of misconduct is proven; or
 - (c) for any other reason by reference to factors including the seriousness of the allegation it no longer appears to be in the Public Interest for a hearing to be held and both the Complainant and the Subject have had an opportunity to make representations to the Director about a possible cancellation.
- 6.2 *Composition*
- 6.2.1 The Disciplinary Committee shall consist of one IOSH member and two independent members.
- 6.2.2 An individual will not be eligible to be appointed as a member of the Disciplinary Committee if he has had any previous involvement in the matter or is a member of the IOSH Council or the IOSH Board of Trustees.
- 6.2.3 The Disciplinary Committee shall appoint one of the independent members as Chair.
- 6.3 *Clerk*
An employee or appointee of IOSH who has not previously been involved in the matter and who is not a member of the IOSH Council or the IOSH Board of Trustees shall act as clerk to the Disciplinary Committee.

- 6.4 *Procedure*
- 6.4.1 Subject to the following and to the provisions of these Regulations, the Disciplinary Committee shall determine its own procedure.
- 6.4.2 The Disciplinary Committee may adjourn at any time to discuss decisions or determine a procedural query.
- 6.4.3 The Disciplinary Committee may obtain such legal, technical or other advice as it thinks fit.
- 6.4.4 Any advice received by the Disciplinary Committee in accordance with paragraph 6.4.3 shall be disclosed, before the Disciplinary Committee exercises any of the powers available to it under paragraph 6.6, to the Director and the Subject.
- 6.5 *Hearing arrangements*
- 6.5.1 The Disciplinary Committee shall hold a hearing to consider the matter afresh. The case against the Subject shall be presented by the Director. The Subject and the Director may call witnesses in support of their cases.
- 6.5.2 The Subject shall be informed in writing of the substance of the allegations against him at least 30 working days before the hearing. Notice of the allegations must include the date and time of the hearing and be accompanied by copies of any documentation (including witness statements) to be considered at the hearing, together with details of any witnesses to be called by the Director.
- 6.5.3 At least 15 working days before the hearing, the Subject shall confirm in writing if he admits or denies the allegations, and provide copies of any documentation (including witness statements) on which he intends to rely, together with details of any witnesses to be called.
- 6.5.4 At least 10 working days before the hearing, the Clerk to the Disciplinary Committee shall circulate to Committee members and to the parties a bundle consisting of the documentation referred to at paragraphs 6.5.2 and 6.5.3, together with a copy of these Regulations.
- 6.5.5 The Disciplinary Committee may proceed in the absence of the Subject if:
- (a) the Subject has been properly notified of the date and time of the hearing in accordance with paragraph 6.5.2; and
 - (b) it is satisfied that doing so is fair, taking account of any information given by or on behalf of the Subject balanced against the Public Interest.
- 6.5.6 The Subject may be represented at the hearing by a friend, legal or other representative.
- 6.5.7 Unless determined otherwise by the Disciplinary Committee, the hearing shall be open to the Complainant, IOSH members and to the general public. The Disciplinary Committee may exclude or expel any person from all or part of the hearing if that person disrupts, or is likely to disrupt, the hearing, or if fairness otherwise requires.
- 6.5.8 The Subject and the Director may question, at the hearing, witnesses called by the other party. The Disciplinary Committee may ask questions of any person present at the hearing. Unless determined otherwise by the Disciplinary Committee, only those witnesses whose details and statements have been provided to the other party in advance (in accordance with paragraphs 6.5.2 and 6.5.3) shall be entitled to speak at the hearing.
- 6.5.9 Unless determined otherwise by the Disciplinary Committee, evidence shall be taken in the following order:
- the Director will present the case against the Subject;
 - the Subject will present his case;
 - the Director will be invited to give a closing statement;
 - the Subject will be invited to give a closing statement.
- 6.6 *Powers*
- 6.6.1 The Disciplinary Committee may:
- (a) adjourn on such terms as it considers appropriate; or
 - (b) dismiss the allegation; or
 - (c) find the allegation proven, and may also by way of imposing a penalty or penalties take any one or more of the following actions in respect of the Subject, on such terms as it thinks fit:
 - (i) provide guidance on his conduct;
 - (ii) issue him with a reprimand;
 - (iii) remove him from the Board of Trustees and/or Council and/or any other IOSH committee as applicable;
 - (iv) suspend his membership of IOSH; or;
 - (v) expel him from membership IOSH.
- 6.6.2 Before imposing a penalty the Disciplinary Committee shall consider mitigation, if any, offered by the Subject.
- 6.6.3 If in the opinion of the Disciplinary Committee it is appropriate in the interests of fairness, the Disciplinary Committee may order IOSH or the Subject to contribute to the costs incurred by the other in the conduct of the hearing.

- 6.7 *Notification of decisions*
The Disciplinary Committee shall inform the Complainant, the Director and the Subject of its decision in writing within 10 working days of the decision being made. The notice must set out the reasons for the Disciplinary Committee's decision, and, if appropriate, must inform the Subject of his right of appeal under paragraph 7.1.1.

7 Appeal Committee

7.1 Jurisdiction

- 7.1.1 The Subject may appeal against the decision of the Disciplinary Committee to the Appeal Committee, by submitting full grounds of appeal in writing to the Director within 10 working days of receiving the Disciplinary Committee's decision.
- 7.1.2 Examples of grounds of appeal include:
- (a) serious errors in the procedures followed by the Disciplinary Committee;
 - (b) the imposition of an unreasonably excessive sanction by the Disciplinary Committee; or
 - (c) the emergence of new material evidence, which could not reasonably have been submitted to the Disciplinary Committee.
- 7.1.3 If the Director wishes to submit a response to the Subject's grounds of appeal, he shall do so within 10 working days of receiving it.

7.2 Composition of Appeal Committee

- 7.2.1 The Appeal Committee shall consist of one IOSH member and two independent members
- 7.2.2 An individual will not be eligible to be appointed as a member of the Appeal Committee if he has had any previous involvement in the matter or is a member of the IOSH Council or the IOSH Board of Trustees.
- 7.2.3 The Appeal Committee shall appoint one of the independent members as Chair.

7.3 Clerk

An employee or appointee of IOSH who has not previously been involved in the matter and who is not a member of the IOSH Council or the IOSH Board of Trustees shall act as clerk to the Appeal Committee.

7.4 Procedure

- 7.4.1 Subject to the following and to the provisions of these Regulations, the Appeal Committee shall determine its own procedure.
- 7.4.2 The Appeal Committee may adjourn at any time to discuss decisions or determine a procedural query.
- 7.4.3 The Appeal Committee may obtain such legal, technical or other advice as it thinks fit.

- 7.4.4 Any advice received by the Appeal Committee in accordance with paragraph 7.4.3 shall be disclosed, before the Appeal Committee exercises any of the powers available to it under paragraph 7.6, to the Director and the Subject.

7.5 Hearing arrangements

- 7.5.1 The Appeal Committee shall hold a hearing to review the Disciplinary Committee's decision unless, exceptionally, the Appeal Committee determines that a full re-hearing is appropriate.
- 7.5.2 The Subject shall be informed in writing of the date and time of the hearing at least 30 working days in advance.
- 7.5.3 At least 10 working days before the hearing, the Clerk shall circulate to members of the Appeal Committee, the Subject and the Director copies of the Disciplinary Committee's decision, the grounds of appeal submitted in accordance with 7.1.1, the response of the Director, if any, and a copy of these Regulations.
- 7.5.4 The Appeal Committee may proceed in the absence of the Subject if:
- (a) the Subject has been properly notified of the date and time of the hearing in accordance with paragraph 7.5.2; and
 - (b) it is satisfied that doing so is fair, taking account of any information given by or on behalf of the Subject balanced against the Public Interest.
- 7.5.5 The Subject may be represented at the hearing by a friend, legal or other representative.
- 7.5.6 Unless determined otherwise by the Appeal Committee, the hearing shall be open to the Complainant, IOSH members and to the general public. The Appeal Committee may exclude or expel any person from all or part of the hearing if that person disrupts, or is likely to disrupt, the hearing, or if fairness otherwise requires.
- 7.5.7 The Subject may present his grounds of appeal and the Director may respond. The Appeal Committee may ask questions of any person present at the hearing.
- 7.5.8 If the Appeal Committee determines, in accordance with paragraph 7.5.1, that the appeal will be a full re-hearing, the re-hearing shall be conducted in accordance with the provisions of paragraph 6.5, and references to the Disciplinary Committee shall be read as references to the Appeal Committee.

7.6 Powers

7.6.1 The Appeal Committee may:

- (a) adjourn on such terms as it considers appropriate; or
- (b) confirm the Disciplinary Committee's decision; or
- (c) overturn the Disciplinary Committee's decision; or
- (d) vary the Disciplinary Committee's decision with any one or more of the actions that were available to the Disciplinary Committee in paragraph 6.6 (c) being available to the Appeal Committee by way of imposing a penalty or penalties in relation to the Subject on such terms as it sees fit.

7.6.2 Before imposing a penalty the Appeal Committee shall consider mitigation, if any, offered by the Subject.

7.6.3 If in the opinion of the Appeal Committee it is appropriate in the interests of fairness, the Appeal Committee may, order IOSH or the Subject to contribute to the costs incurred by the other in the conduct of the hearing.

8 Publication of disciplinary decisions

Unless the Relevant Committee determines otherwise, decisions made under paragraphs 5.4 (c) (i), 6.6 and 7.6 shall be published in the official magazine of IOSH and/or on its website. Unless requested in writing by the Complainant or by the witness concerned, the published decision shall not identify the complainant or any witnesses involved in the proceedings.

9 Former members

9.1 This paragraph applies where:

- (a) an allegation of misconduct meeting the requirements of paragraph 3.2.1 is required; and
- (b) the Subject has ceased to be a member of IOSH by the time the allegation of misconduct is received; and
- (c) the allegation of misconduct relates to matters which occurred during the time the Subject was a member of IOSH.

9.2 The Director shall decide at his absolute discretion whether or not to investigate an allegation of misconduct falling within paragraph 9.1. If the Director decides to investigate the allegation of misconduct, then these Regulations shall apply to the Subject as if he had not ceased to be a member of IOSH.

Appendix G – Grid of Selected Interview Quotes from the Analysis of Interview Data

	Participants anonymous name	What is Ethics	Value of the Code	Who are Obligations Owned	Being a H&S Professional	Examples of Ethical Dilemmas	Competence	Education & CPD on Ethics	Employers Interest in the Code	Reality Check
1	Ben	x				x				x
2	Laura	x	x	x		x		x		
3	Stephen	x								
4	Shane	x								
5	Malcolm	x		x						
6	Alison	x		x	x	x				
7	Tony		x			x				
8	Toby					x			x	
9	Bill		x		x	x				
10	Robert				x					
11	Alistair					x				
12	Rebecca					x				
13	John						x			

Appendix H – Presentation and Case Studies to IOSH Council 2010



Professional Committee revised Code of Conduct

- Presentation - Proposal for a new Code of Conduct
- 30 minutes for Questions
- Lunch
- Council divided in groups and briefed on case study work
- 30 Minutes working on case study in groups
- Each group presents back to council 5-10 minutes per group
- Closing comments and vote on new Code



Introduction

- Current IOSH Strategy includes objectives to;
 - Advance high professional standards.
 - Become the occupational safety and health thought leader.
- The current Code of Conduct was originally introduced in 1995 and has received several additions and amendments, most recently in 2004.
- The introduction of Chartered membership and increasing scrutiny of the profession forces us to think more critically about professional conduct.
- The Professional Committee has seen an increase in allegations of misconduct and have also experienced difficulty in using the existing Code.
- In 2009/10 a working party of the Professional Committee undertook a review of the Code.



Number of Cases

Cases reviewed by the Professional Committee. A case may involve multiple allegations of misconduct.

2000 - 08	2009 – to date	Total
21	14 (66% of previous 9 years cases)	35

Cases that have resulted in expulsion.

2000 - 08	2009 – to date	Total
2	3 (Plus referrals from the PC to DC yet to hear)	5



What is the code?

- In the Institution's Byelaws, *"Code of Conduct means rules governing the conduct of members made by the Board of Trustees."*
- Byelaw 5 states that every *"member shall upon election be supplied with a copy of the Charter and Byelaws and the Code of Conduct and shall sign an undertaking to observe the same."*
- Byelaw 8 *"all members are required to comply with the Code."*
- Codes are defined in the literature as a combination of:
 - Principles
 - Values
 - Standards
 - Rules of behaviour
 - Procedures for disciplinary action and sanctions



What types of allegation do we see?

Criminal convictions

- Members have been fined by Courts for health and safety offences.
- For other offences sentences given to members have included imprisonment, disqualification from working with children, sexual offences prevention orders and registering as a sex offender.



Issues of Honesty & Integrity

In one case an affiliate member was using a photocopy of a certificate purporting to admit them to graduate membership.

IOSH membership certificates have a number of security features built-in so it was possible to establish that the affiliate had not been using a 'clean' copy of an original certificate issued by IOSH.

During the investigation the affiliate member submitted no other documents to support either a claim to have been admitted to graduate membership or a claim to be eligible for transfer to that category.



Issues of Respect, Competence & Service

More general conduct complaints have been received about inappropriate or unprofessional behaviour, often though not exclusively evidenced by a letter or an email that the complainant has found offensive.



Allegations considered by the PC over a 16 month period ended 30 April 2010

Sanction	Number of Allegations
Dismissed	32
Denied – Referred to Disciplinary Committee	5
Admitted & Guidance Issued	0
Admitted & Reprimand Issued	2
Admitted – Referred to Disciplinary Committee	2
Total Allegations	41



Is the existing code fit for purpose?

- Disciplinary & Regulatory Proceedings – Brian Harris OBE QC
"Codes are frequently drafted at two levels: a high level statement of principle and a more detailed set of working rules."
- In 2004 a solicitor consulted by IOSH commented that:
"The Code is in many respects a combination of the aspirational ... and the very basic ... which does not make the judgement on precisely what conduct will amount to a breach particularly straightforward."



Why have a new Code?

- The existing Code is not widely understood.
- Society must know what to expect of our members.
- Large parts of the existing Code overlap and some key elements omitted.
- Some code points are unrealistic, for example the guidance on code point 19 refers to mental health.
- The PC has experienced some problems interpreting and using the existing code.



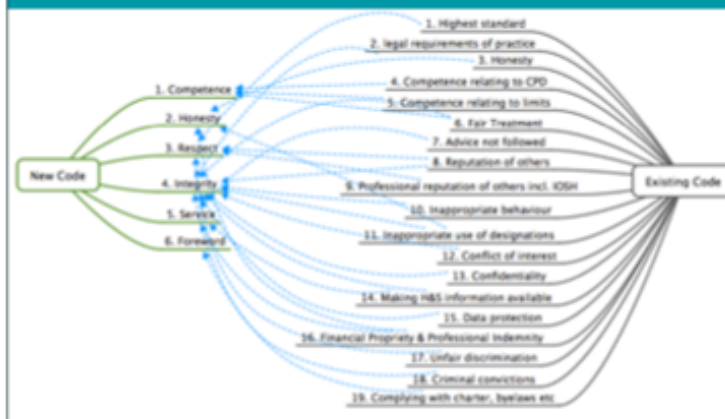
Overlaps in the existing Code

Code point	Topic	overlaps
1	Highest standards	3, 16 & 17
2	Legal requirements of practice/operation	17 & 18
3	Honesty	1, 12 & 16
4	Competence (CPD)	1, 5 & 19
5	Competence (limits)	4 & 19
6	Fair treatment	17 & 18
7	Advice not followed	-
8	Reputation of others	9 & 10
9	Professional reputation of others incl. IOSH	8 & 10
10	Inappropriate behaviour	8 & 9
11	Use of membership/designations/qualifications	8 & 19
12	Conflict of interest	1 & 3
13	Employer/client/IOSH confidentiality	14 & 15
14	Making H&S information available	13 & 15
15	DPA compliance	2, 13, 14 & 18
16	Financial propriety	1, 3 & 12
17	Unfair discrimination	1, 2 & 18
18	Law and conviction notification	1, 2 & 17
19	IOSH Charter, Byelaws and Regulations	11

the heart of
health and safety



Mapping of existing Code points to proposed categories



The proposed Code of Conduct

- ✓ Competence
- ✓ Honesty
- ✓ Respect
- ✓ Integrity
- ✓ Service



Simplification of Code Points

- Existing Code Point 3 of 19

- Members called on to give an opinion in their professional capacity shall be honest and, to the best of their ability, objective and reliable.

- HONESTY

- 2.1 Members shall not knowingly mislead anybody.



New Code Points Introduced

HONESTY

2.2 Members shall neither offer nor accept inducements in connection with their professional activities.

RESPECT

3.4 Members shall respond promptly and appropriately to all disputes and complaints.

3.5 Members shall respect the privacy and rights of others.

SERVICE

5.1 Members shall carry out their professional work in a timely manner and with proper regard for levels of service and customer care reasonably expected of them.



Recent Developments

- Working party on learning objectives for higher qualifications has introduced ethics & professional development into the new HE syllabus.
- Professional ethics has also be introduced into the new NEBOSH Diploma syllabus.
- An appreciation of ethical behaviour is now being explored in the interview process for Chartered membership.
- Going forward it would be beneficial to develop CPD modules on professional ethics and further guidance for members and anyone else affected by our activities.
- Create a stronger web presence on professional ethics.



Questions & Discussion



Case study

- Each group will be given a different case study to work on.
- Discuss the case in your group to reach a consensus on:
 1. Is there is a case to answer against the subject?
 2. If there is a case to answer what sections of the code may have been breached?
 3. What sanctions if any should be applied?
 4. Is there anything else that should be considered when reviewing this case?
- You should prepare a 5-10 min presentation answering the questions above and including your rationale on reaching these decisions.
- You can nominate a spokesperson or present as a group. You are free to make any reasonable assumptions felt necessary and should clearly state these in your presentation.



CASE STUDY A - Facilitator SB

"Health and safety officer drink drives dumper in city centre"

This is the headline from an article in the local press concerning Ms J who is an IOSH member. The chairperson of the local IOSH branch read this article and subsequently made a complaint to IOSH that Ms J may have breached the IOSH code of conduct. The article showed that Ms J was reported as saying it was a prank as she left a pub to go a nightclub during her hen night and the police had blown it out of all proportion. Ms J pleaded guilty on legal advice and emphasized that, although she was 3 times over the limit, the dumper truck had only travelled far enough for her friends to get some pictures. One of the hens Ms S, also an IOSH member, is quoted as saying

*"....the company should not have left keys in the vehicle in any case and it is them not Ms J**** who should be on trial here"*

You have a certificate of conviction showing that Ms J received a driving ban and fine. You have a letter from Ms J denying misconduct stating that this was a private matter and not related to her work as a health and safety professional.



CASE STUDY B - Facilitator SL

An allegation of misconduct has been received concerning the way Mr P delivered the IOSH managing safety course to a local authority social services department in North East London. There were 12 delegates on the course and four complained to IOSH. Three complainants, A, B and C (corresponding separately), all quoted P as saying:

"Poles are the new Irish workers and about same level of intelligence....."; and "What do you call a blonde with brain cells?.....Pregnant!"

They also said P frequently referred to female delegates as "Dear" and "Love" in what they considered to be a derogatory manner. The other complainant, D, had a more general objection to the quality of the training. D said:

"The trainer did not deliver in a professional manner and did not seem to be able or willing to relate to our area of work. I also found his sense of humour to be less than amusing. Overall the attitude of the trainer was poor."

P has denied any misconduct stating:

"I have delivered 100's of IOSH and CITB courses since 1995 with no complaints. I use humour to break the ice and make a dull subject more fun. My sense of humour may be an acquired taste for some but I do not believe that this amounts to misconduct or a breach of the code of conduct because any offence was unintentional."



CASE STUDY C - Facilitator HH

A recruitment company has complained about Mrs. T. An employer who interviewed Mrs. T became suspicious about her CV. After checking with IOSH they discovered that she is a GradIOSH rather than a CMIOSH as claimed. The recruitment company was embarrassed when it asked the employer why T was not offered the job. It made further enquiries and found other details on T's CV to be exaggerated. For example a position held at previous consultancy was described as a "senior" one managing clients when in reality it was a junior position. The recruitment company feels T has damaged its reputation and wants IOSH to make an example of her.

Mrs. T has responded by stating

"I am very sorry for telling both the recruitment company and the employer that I was a CMIOSH. I have a NEBOSH Diploma and hope to soon achieve my Chartered status. I only jumped the gun a little and won't do it again. It's not like I am unqualified. I felt sure I was competent to do the job that I applied for. In this market employers can ask for CMIOSH when they do not need it; the salary was not great. A CV is a selling document and actually not receiving reward, or even credit, for what I was really doing in the so-called 'junior' position was the reason I left that consultancy"



Case Study D - Facilitator SA

Mr F is a consultant. One of his clients, XYZ Ltd, has made a complaint to IOSH. XYZ asked F to conduct an audit of their H&S management system and to inspect their warehouse facilities. They did so because the local authority Environmental Health Officer (EHO) had expressed concerns on a recent visit.

F conducted the inspection in January. He took away documentation, including the H&S policy, training records and certain maintenance records. F has not sent XYZ an audit report despite invoicing for it in February. Neither has F returned the documentation he took. XYZ paid the invoice promptly. When they chased F for the report, as well as their documentation, he promised to send it but mentioned being overloaded with work. XYZ are expecting the EHO to make a return visit soon. XYZ feel let down. They are consulting Trading Standards about civil redress but have complained to IOSH about not receiving the audit report they paid for and about the quality of F's previous advice.

IOSH urged F to return any documentation belonging to XYZ and asked whether he is undertaking CPD. F's response was a voicemail message, left out of hours, saying: he cannot cope with his workload because he is in the middle of a messy divorce; and he has not recorded CPD online but hopes to sort out a training budget for attending refresher courses next year.



Case Study E - Facilitator TB

- A Safety Advisor who is a friend from your NEBOSH diploma course is working on a project where the project fees payable are wholly inadequate and were negotiated by another part of the organisation. The fees are some 10% less than what should have been costed. The budget has been spent and the project is now showing a loss and your colleague has been asked to do a short and sweet Health and Safety File so that the loss is not higher than it needs to be by the Project Director. Your friend has also been told that there is no budget for site meetings and visits and nothing towards reviewing the design for H&S implications.
- He has approached you to ask what the consequences may be from the professional body view point if he acquiesces to the requests and this behaviour subsequently comes to light.



Conclusion



Appendix I – Notes from IOSH Council Meeting Sep 2010

NOTES FROM IOSH COUNCIL – 14TH SEPTEMBER 2010

ITEM 4 Code of Conduct

JH welcomed SA and SL to the stage to make a presentation.

JH said first stage of this has been done by Professional Committee and asked Council to concern themselves with the content rather than grammar – these issues will be covered by several processes – PEC, Solicitors, Publications department and BoT.

SL & SA made a presentation – he introduced the five people who would be the facilitators today. SL, TB, HH and SB. He ran through the order of the item up to lunch.

After lunch – case study work broken in to 5 workshops.

SA provided an introduction into why the Code has been revised; outlined the number and types of cases; timely to deal with these matters.

Handed over to SL who did the remaining part of the presentation and outlined the underpinning rationale for reviewing the code. He outlined what the Code is; outlined if the Code is fit for purpose; Why have a new code; parts of Code over lap and unrealistic; Professional Committee has experienced some problems in interpreting and applying the current Code. Identified overlaps and gaps in the current code. Recent developments

SL, SB, HH, SA, TB then formed a panel on the stage to take questions.

PP – Asked for clarification over 4.6 (integrity) He asked what was meant by 4.6? SL advised it was put in to cover people operating in other countries that may have different laws. Taken on board

SL2 – Asked if a legal expert has cast their eye over it. SL said not at this stage – wording will be reviewed by a legal advisor. SB said want Council's opinion first before getting legal advice.

AW – said that new code doesn't act people to act in honesty or integrity. He also said what happens if the law itself is unethical or wrong and we are asking people to comply with them. Also, where you have been charged of a criminal offence – a parking fine is a criminal offence and felt it should be a criminal offence that impacts on honesty and integrity. SL said it is in the code but need robust guidance in this area. SB said in terms of integrity point and legality there is no tariff that is automatically implemented.

AW felt that 'honesty and integrity' should be added. SB felt it was subject and that a member may not think that his actions are wrong and will therefore not report it.

JL – said need clarification of what the Profession is and Professional activity of the member is. Need clarification of what the professional ethics are to everyday ethics – ie people try to get business and this is commercial activity. Therefore, there is an honesty and commercial dilemma. SL said opportunity here to capture these dilemmas.

He questioned 5.3 – keeping written records because John said he provides a lot of things via telephone and doesn't always follow it up with written records – he questioned the words 'shall'. SL said that they have considered this and have also considered verbal contracts.

LP – Has it been benchmarked against other code of conducts of other organisations. SL said did benchmark and used PARN. Looked into what issues are coming up and the types of issues. He also asked what is the proposals for consultations. HH said that Council will be recommending the Code to the BoT and that is their role. Won't be consulting the whole of membership and Council will be taking the lead to set the Code.

NF - 4.6 – she felt that the two sentences together need looking at and for those going out on ambassadorial roles need to be clear and there are times when you are outside the code in order to profile IOSH and health and safety (ie in dubai, couldn't drink water in public because of ramadam but if she did drink it wasn't criminal but would look bad on IOSH). Could find yourself outside of the code because of a dilemma. SB said that it is an interesting debate about things that happen whilst on professional business or personal and will be discussed in the Workshops later.

JB – 4.6 – Also said that how will members reporting their parking tickets etc be dealt with. SA said he was sure that certain things will be filtered out, like parking tickets. JB said that this needs putting in the code not just guidance.

JB asked for the rationale for charged – SB said member is innocent until proven guilty and that a precautionary suspension be there must be a facility for the member to challenge the appropriateness of suspension ahead of a disciplinary hearing. However, suspension has to be pending outcome of a criminal investigation and is useful to have this option.

SL said important difference is that notification of a charge rather than being charged. JL was not happy and said that notification of charge does not mean a member is guilty and IOSH needs to support members. Could be the end of someone's career if notified of charged but not actually charged.

IW – Philosophical issue – understands why the code needs to be enforceable and worried that the code contains words for someone doing something wrong rather than what is right. IW also said an important section is missing in the new code that was in the old one in respect of the work force. Section 1 (primary duty to workforce). SL said this should be added.

IW said the new code says things you shouldn't do and not so much what you should do. He thinks section one is important and needs to be added in. Needs a positive stance for our members and encourage members

IW said that there is nothing in the draft in respect of expert witnesses and this needs adding. There is a code of practice for expert witnesses. Stephen said 2.1 is relevant – Ian said yes but needs more.

S – Asked about the intention of the document and if H&S practitioner made a legitimate genuine mistake how would this be dealt with. SA said first two items cover this and SL said it is not necessarily unethical to make a mistake and won't result in expulsion.

Lunch – NCS had left the meeting.

SA and SL briefed council on what he would like them to do within the workshops. Each workshop presented their case study and looked at the draft Code of Conduct

Team A – TB – Things should be dealt with on a step by step process. There was potential for this incident to bring the institution into disrepute. Some discussion about the cross over between professional and private life issues and whether this fell under the code. Consider each case on its own merits. Code breach and byelaws breach and therefore should receive a sanction, possibly a reprimand. IOSH would need to be prepared to respond to issues in the press. Possibly influence of external private factors leading to drinking.

Team B – SL2 – 4 keys points – (point 3.1 breached) derogatory comments (Irish, Point 3.1 breached – (blondes), Use of 'Dear' 'Love' – not sure this was complained about and needed more info on age and geographic of the tutor – need more information- was it just woman – did he refer to men this way), Professionalism (breach of 5.1) and attitude (breach of 5.1). Sanctions – talked about providing guidance to the trainer and providing him with a caution. However,

there is nothing in the new Code about cautions. Need guidance. Also need to consider the complainant.

Questions – GH said that if he had been training for 15 years then the Commercial Affairs department might be away. Also what training had he been given.

TC – said that also talked about sending an undercover student to assess the tutor as a sanction.

Team C – NF – Felt that there was a case; 2.1 was breached; 4.1 misrepresented for financial gain (weren't in consensus about this because was it money trouble that made her do it or just to get a better job) ; 1.3 (weren't agreed on this). Agreed that the action would come under 2.1. Sanctions would be issue a reprimand with guidance. Needed more info on her progression towards to CMIOSH. Legal actions could be taken under this which would give rise to 4.6 (fraud). Would then write a letter to the recruitment agency who should have followed up any references and checked she was CMIOSH. Didn't feel she was damaging IOSH's reputation.

Team D – GH – Felt it was a unique case. Member in the middle of a messy divorce and over worked and wondered what support he had. Felt member had breached 5.1 and 5.3. also HH could have a complaint that the member hasn't completed any CPD and 5.4. Breached 3.4 and 4.4. Felt sanctions were hard to enforce and felt he needed guidance in respect of what is required towards the client. Could offer timescales in respect of CPD. If not fulfilled, then reprimand. This group wasn't sure what help would be available for the member – issue that has come out of this.

SL2 – asked if returning the money to the client was discussed. GH said it was discussed to either return the money or do the work.

TC – Felt that IOSH getting involved was support in itself.

IW – said that it needs to be defined which part of IOSH is giving the disciplinary and which part of IOSH is giving the support because if it's the same people the member won't necessarily differentiate this.

JL – said that IOSH could talk to EHO and look very professional.

SL2 – concerned we would change into an arbitrator.

Team E – TB – Felt that if he went ahead all parts of the code would be breached. Would support the member and make sure everything was documented. However, if the member did what the employer said it would force him to breach the code of conduct. 5.1 would be breached. 2.1 breached with creating an inappropriate safety file that doesn't contain vital pieces of info that could cause harm. Identified a moral dilemma – how far can a member adhere to the code of conduct and if so what support will IOSH offer. (i.e. being out of a job). TB group felt that the 'shalls' should be removed. Group felt that a 'forward' needed adding to the Code. Didn't feel there was a case.

JL agreed that there wasn't a case. Didn't feel it was an IOSH issue.

Brenda felt that 3.5 is so short and brief – how far do you respect the privacy and rights of others. It's a conscience aspect. TB said it needs detailed guidance.

SL2 – Felt that if the 'shall' be removed it waters down the Code.

IW – agreed that the words shouldn't be watered down.

NB – observed that this case compared to the others is that it happens to multiple people across businesses due to the economic downturn and are facing this problem. Dangerous for us to step into a situation where the code hasn't yet been breached. It would be difficult to make a decision about where a breach might have been made and didn't feel it was a breach of the code.

JL then opened up for further debate:

TB – felt that professional indemnity insurance was important.

JL – Agreed that it was a must.

NB – professional indemnity and public liability should be essential

SL2 – asked if there would be a facility to convene a panel at short notice. HH said that there will be a facility for a faster response. SA added that these can also be done via video conference, telephone conference etc.

LP– said word ‘behaviour’ is missing from the Code. SL said that the word ‘behaviour’ would appear in the high level statement/forward.

IW said that the part said that mustn’t discriminate age and gender, but he said that some risk assessments mean you have to. Also under integrity, conflicts of interest do occur when you are asked to work for both parties – so IOSH need to be careful about these dilemmas.

SA summed up:

OSH President proposed that PEC refine the draft taking into account the suggestions by Council, email to Council for comment and then Feb Council for approval and then March BoT.

Amend code and all the necessary guidance in light of comments by 31st October; email Council for comment back by end of November; refer to the lawyers over the Christmas period.

Publishing and design to refine the language, dots, commas Jan and have it back to Council for Feb 2011 for approval and then go to BoT for final approval in March 2011.

Vote

For 26 – unanimous

Against – 0

Abstentions – 0

Appendix J- Level 4 & 5 Descriptors Mapping to the Proposed Programme

	DProf Criteria	Descriptor Level 4	Descriptor Level 5	Programme & Project Mapping Description
1	Ethical Understanding	Ethical understanding will span a range of contexts, where applicable prescribed codes and their rationale will be critically understood and sensitively applied	Is sensitive to the complexities of ethical issues and the influence of values; is able to work from a sound theoretical base towards practical resolution of issues. Seeks out and uses appropriate professional and legal frameworks and guidance.	<p>Level 4 In meeting the level 4 descriptors the development of educational and training courses throughout programme involved the application of legal standards and ethical guidelines relevant to the practice of occupational safety and practitioners.</p> <p>Level 5 The project outcomes are fundamental to this level 5-descriptor. It is by underpinning the professional activities of practitioners with the legal and theoretical framework that this gap has been identified. The practical resolution of the issue concerning professional ethics is through the anticipated product of a competence framework for this particular area and a revised code of conduct with guidance.</p>
2	Knowledge	<p>Identification and appropriate use of sources of knowledge and evidence will be wide ranging, critical and often innovative</p> <p>Analysis, synthesis and evaluation of information and ideas will result in the creation of knowledge of significance to others</p>	Demonstrates the ability to interpret existing knowledge and to create new knowledge and new applications. Such Knowledge is expected to be both discipline-specific and interdisciplinary in order to reflect the complex nature of professional work.	<p>Level 4 As an Occupational Safety and Health Practitioner the application of knowledge is varied and often innovative both in terms of problem solving on risk management strategies or communication of standards and legislative requirements to employers. The use of training needs analysis models in the development of training courses for industry has involved the analysis of roles and task, synthesis of needs and the development of novel and innovative methods of delivery and has met the level 4 descriptors through RAL claims involving the development of training and applied research methods.</p> <p>Level 5 The design of new academic programmes at undergraduate and postgraduate level in occupational safety and health involves the application of discipline specific and interdisciplinary knowledge,</p>

	DProf Criteria	Descriptor Level 4	Descriptor Level 5	Programme & Project Mapping Description
				<p>often leading to new applications relevant to practice.</p> <p>There is much written on ethics and professional ethics much of which is grounded in ancient philosophy. The application of the theories of morality and ethics to this particular professional is to some extent novel. The dilemmas faced by practitioner in their complex areas of work involving; advising employers, protecting employees and the public and the legislative framework; require this level of in depth investigation and resolution. The interdisciplinary nature of the proposed study will do much to benefit the profession and provide a solid theoretical basis for future developments in professional practice.</p>
3	Professional Practice	<p>Action planning leading to effective and appropriate action will be complex and is likely to impact upon the work of others</p> <p>Application of learning will transcend specific contexts</p>	<p>Evidence of the ability to take initiative in complex and unpredictable situations in professional environments. Show evidence of a high level of performance and influence which is acknowledged by peer and expert review.</p>	<p>Level 4</p> <p>Action planning has been conducted at a strategic and line management level within the role as operations director of a business, this has impacted on the professional practice and continual professional development of consultants engaged in client focused projects.</p> <p>Formal education in occupational health and safety has been applied and in certain cases transcended the formal context in which it was original taught, for example the development of bespoke systems based on needs analysis, training and incident investigations with information gained used in organisational development and improvement.</p> <p>Level 5</p> <p>The study will involve the interaction with both the professional body at a senior level and practitioners at all levels through the attendance of the IOSH professional affairs committee, consultation with practitioners at regional branch meetings and seeking expert opinion in key areas such as law, risk management, ethics</p>

	DProf Criteria	Descriptor Level 4	Descriptor Level 5	Programme & Project Mapping Description
				and psychology.
4	Project Development	Selection and justification of approaches to task/problem will be self-directed and involve recognition, articulation and critical evaluation of a range of options from which a justified selection based upon a reasoned methodology is made	Has the general ability to conceptualise, design and implement a project for new knowledge, applications or understanding at the forefront of the discipline and adjusts the project in the light of unforeseen problems.	<p>Level 4 The previous projects (RALx2) and reflection on the impact of these projects have provided useful insights into the design and management of projects and the application of knowledge in practical settings to solve real world problems as they arise.</p> <p>Level 5 The proposed project is at the forefront of occupational safety and health; it may yield unexpected results and unforeseen issues due to the very nature of the subject matter. I feel that my previous professional appointments have prepared me for these eventualities through the processes of change management and exposure to ethical decision-making dilemmas myself and by consultants I have been responsible for.</p>
5	Communication	Effective communication both in writing and orally will be in an appropriate format to appeal to a particular target audience and will be clear, concise and persuasive	Can communicate complex or contentious information effectively to a range of audiences in academic, work related and other fields. Consults and collaborates with others appropriately in order to formulate ideas, plans and conclusions.	<p>Level 4 Compilation of reports to senior management, development of policies and procedures for both SME's and FTSE100 companies. Development and delivery of training material at all levels including senior executives.</p> <p>Level 5 The subject of professional ethics is clearly contentious as it involves many points of view. Whilst the surveying of the professional membership by questionnaire will be anonymous, the focus group sessions will involve possibly handling conflict as a result of opinions on professional practice that most practitioners hold very dearly. Previous senior level appointments, training at all levels and committee work have all helped to prepare me for these eventualities. The communication of the results, the formulation of the competency framework and the design of the CPD course are</p>

	DProf Criteria	Descriptor Level 4	Descriptor Level 5	Programme & Project Mapping Description
				instrumental to the study.
6	Reflection & Self-Appraisal	Self-appraisal/reflection on practice will lead to significant insights which are likely to make a lasting impact upon personal and professional understanding	Is able to use reflection and self-appraisal to identify the emergence, development and demonstration of capabilities across the spectrum of professional activity.	<p>Level 4 The reflection carried as part of the review of professional learning has provided a useful insight into my own motivations not only for my chosen profession but also for the programme of study I am proposing.</p> <p>Level 5 The field of professional ethics will undoubtedly touch on many aspects of professional activity and will require not only extensive consultation with my professional peers but also some reflection on my recent professional activities from a slightly different perspective.</p>
7	Collaborative working	Working and learning with others will span a range of contexts, often in a leadership role, and is likely to challenge or develop the practices and/or beliefs of others	Can lead and work effectively within a group, including interdisciplinary teams and with specialist and non-specialist members. Is able to clarify the task, managing the capacities of group members and negotiating and handling conflict with maturity.	<p>Level 4 Collaborative working has been one of the many privileges of working as a practitioner in this area. Both as a member of a team and as the leader the learning opportunities have been numerous and have undoubtedly contributed to my development and the development of others. Practitioners do not always agree and often the developmental process involves vigorous debate based on a combination of experience, underpinning theory, legal and professional standards being taken into account, as team leader my role has often involved facilitating these discussions as part of a risk based decision making process.</p> <p>Level 5 The proposed programme will involve working with the professional body at a senior level and collaborating with my colleagues at regional branch meetings. The research activity is not a team project and therefore will not involve the direct management of team to complete the aim and objectives. However considerable collaboration will be needed from the professional body and its members, which</p>

	DProf Criteria	Descriptor Level 4	Descriptor Level 5	Programme & Project Mapping Description
				will draw upon the skills learnt during my previous appointment as operations director and more recently as programme leader.
8	Resource Management	Effective use of resources will be wide ranging and is likely to impact upon the work of others	Displays effective use of human, technical and financial resources in the selection and operation of work	<p>Level 4 In projects presented as RAL claims at level 4 as part of the programme, resource management has been wide ranging including human, material and financial resource management having a direct impact on those involved in the projects as team members and those clients receiving the benefits of the final products such as training or consultancy services.</p> <p>Level 5 Having worked at a senior level resource management has been diverse including material, human, data and financial resources as a line manager and within a strategic business context. Resource management during the proposed programme is key. The project will involve the effective use of human resources in the organisation of consultation session at branch level and the organisation, consultation and presentation of information at a senior level at IOSH committee level.</p>